

EXHIBIT "B"

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CHAWEZI MWANTEMBE, et al : CIVIL ACTION

vs. :

TD BANK, N.A., et al : 2:09-cv-00135-TJS

- - -

Tuesday, March 9, 2010

- - -

Oral Deposition of JAMES C. GRIMMER,
pursuant to Notice, taken in the offices of Pepper
Hamilton, 3000 Two Logan Square, 18th and Arch
Streets, Philadelphia, Pennsylvania, commencing at
11:15 a.m., before Francine K. Guokas, R.P.R.,
Notary Public.

- - -

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<p>1 APPEARANCES:</p> <p>2 SILVERMAN & FODERA</p> <p>3 BY: LEONARD V. FODERA, ESQ.</p> <p>4 MICHAEL P. LALLI, ESQ.</p> <p>5 26th Floor</p> <p>6 11 Penn Center Plaza</p> <p>7 1835 Market Street</p> <p>8 Philadelphia, Pennsylvania 19103</p> <p>9 Counsel For Plaintiffs</p> <p>10</p> <p>11 PEPPER HAMILTON</p> <p>12 BY: STEPHEN G. HARVEY, ESQ.</p> <p>13 3000 Two Logan Square</p> <p>14 18th and Arch Streets</p> <p>15 Philadelphia, Pennsylvania 19103</p> <p>16 Counsel For Defendants</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p>1 DOCUMENT REQUEST</p> <p>2</p> <p>3 Page Line</p> <p>4</p> <p>5 107 13</p> <p>6 186 18</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
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<p>1 INDEX</p> <p>2</p> <p>3 WITNESS PAGE</p> <p>4 JAMES C. GRIMMER</p> <p>5 By Mr. Fodera 5, 230</p> <p>6 By Mr. Lalli --</p> <p>7 By Mr. Harvey 228</p> <p>8</p> <p>9</p> <p>10</p> <p>11 EXHIBITS</p> <p>12</p> <p>13 NO. DESCRIPTION PAGE</p> <p>14 Plaintiffs' Exhibit Grimmer-1 22</p> <p>15 Handdrawn Chart, consisting of 2 pages</p> <p>16</p> <p>17 Plaintiffs' Exhibit Grimmer-2 107</p> <p>18 Document Bates-stamped number TD001391, consisting</p> <p>19 of 1 page</p> <p>20 Plaintiffs' Exhibit Grimmer-3 155</p> <p>21 Notice of Deposition to TD Bank, N.A., consisting</p> <p>22 of 4 pages</p> <p>23 Plaintiffs' Exhibit Grimmer-4 211</p> <p>24 Document Bates-stamped number TD000969 through</p> <p>TD000978, consisting of 10 pages</p>	<p>1 (It was agreed by and among</p> <p>2 counsel that all objections, except as to</p> <p>3 the form of the question, are reserved</p> <p>4 until the time of trial.)</p> <p>5 ---</p> <p>6 JAMES C. GRIMMER, having been</p> <p>7 duly sworn, was examined and testified as</p> <p>8 follows:</p> <p>9 BY MR. FODERA:</p> <p>10 Q. My name is Len Fodera. This is my</p> <p>11 associate Mike Lalli. We've instituted an action</p> <p>12 against TD Bank. I'm going to ask you some</p> <p>13 questions today. TD Bank has put you up as a</p> <p>14 witness for certain areas of inquiry that we have.</p> <p>15 And before I start to ask you</p> <p>16 questions, let me give you some instructions. I</p> <p>17 assume that you've met -- are you represented here</p> <p>18 today?</p> <p>19 A. Yes.</p> <p>20 Q. And have you met with your attorney</p> <p>21 in preparation for this?</p> <p>22 A. I have.</p> <p>23 Q. And maybe he's given you</p> <p>24 instructions; maybe he hasn't. Have you been</p>

<p style="text-align: center;">Page 6</p> <p>1 deposed before?</p> <p>2 A. Once.</p> <p>3 Q. How long ago?</p> <p>4 A. I'm guessing, 1982.</p> <p>5 Q. What did that concern?</p> <p>6 A. It was a grand jury case for Mellon</p> <p>7 Bank.</p> <p>8 Q. Were you a witness before the grand</p> <p>9 jury?</p> <p>10 A. No.</p> <p>11 Q. What capacity were you deposed?</p> <p>12 A. It was for the bank. I honestly</p> <p>13 can't recall exactly what it was about.</p> <p>14 Q. A deposition is a question and answer</p> <p>15 period for me to ask you questions and for you to</p> <p>16 respond. Everything that you say is taken down by</p> <p>17 the court reporter. It has the same full force</p> <p>18 and effect as if you're testifying in court.</p> <p>19 Are you on any medications</p> <p>20 today that would prevent you from understanding</p> <p>21 and answering my questions fully, completely, and</p> <p>22 honestly?</p> <p>23 A. No.</p> <p>24 Q. If I ask you a question and you</p>	<p style="text-align: center;">Page 8</p> <p>1 preparation for this deposition, if anything?</p> <p>2 A. Documents relative to the bank's</p> <p>3 training materials, emails, policies, manuals.</p> <p>4 Q. What type of volume of material? I'm</p> <p>5 looking at about 8 inches here. More than</p> <p>6 8 inches' worth of volume?</p> <p>7 A. No.</p> <p>8 Q. Less than 8 inches' worth of volume?</p> <p>9 A. I'd say yeah.</p> <p>10 Q. Less than 4 inches worth' of volume?</p> <p>11 A. Between.</p> <p>12 Q. Did you bring anything with you here</p> <p>13 today? Any materials?</p> <p>14 A. In the building?</p> <p>15 Q. With you to this deposition.</p> <p>16 A. No.</p> <p>17 Q. Did you bring any materials into the</p> <p>18 building today?</p> <p>19 A. Yeah. I brought my laptop with me.</p> <p>20 Q. Do you have an understanding of why</p> <p>21 you have been designated by TD Bank as a person</p> <p>22 most knowledgeable?</p> <p>23 A. Yes.</p> <p>24 Q. What is your understanding?</p>
<p style="text-align: center;">Page 7</p> <p>1 respond to the question, I'm going to assume</p> <p>2 several things: I'm going to assume you heard the</p> <p>3 question, you understood the question, and you're</p> <p>4 responding fully and completely. Would those be</p> <p>5 fair assumptions for me to make?</p> <p>6 A. Yes.</p> <p>7 Q. If at any time during the deposition</p> <p>8 you realize a subsequent answer -- an answer you</p> <p>9 gave me in the past was incorrect or incomplete,</p> <p>10 just stop me, tell me, we'll go back and you can</p> <p>11 supplement that answer.</p> <p>12 A. Okay.</p> <p>13 Q. Okay? If you want to take a break at</p> <p>14 any time, that's fine. Under the Federal rules,</p> <p>15 though, in the Eastern District of Pennsylvania,</p> <p>16 you really can't confer with your counsel while a</p> <p>17 question is pending. Okay? You have to respond</p> <p>18 to the question, and then we'll take whatever</p> <p>19 break you need.</p> <p>20 A. Okay.</p> <p>21 Q. Before we begin this deposition, do</p> <p>22 you have any questions of me?</p> <p>23 A. No.</p> <p>24 Q. Can you tell me what you reviewed in</p>	<p style="text-align: center;">Page 9</p> <p>1 A. Is that I have experience with the</p> <p>2 TD Bank policies, procedures, training materials,</p> <p>3 execution of sales of gift cards for TD Bank.</p> <p>4 Q. Why don't you tell me your</p> <p>5 background. I can infer that you worked at Mellon</p> <p>6 Bank --</p> <p>7 A. Yeah.</p> <p>8 Q. -- but where did you go to</p> <p>9 high school, where did you graduate from high</p> <p>10 school, did you go to college? Just walk me</p> <p>11 through your educational and work history.</p> <p>12 A. Sure. I went to high school in</p> <p>13 Philadelphia, Catholic Boys High School in</p> <p>14 Northeast Philadelphia, Archbishop Ryan</p> <p>15 High School.</p> <p>16 Q. Are you from Melrose Park or</p> <p>17 Parkwood?</p> <p>18 A. I'm from -- no, more Knights Road. I</p> <p>19 don't even know what they call it. It's like a</p> <p>20 section in that area, but not either one of those.</p> <p>21 Q. Okay.</p> <p>22 A. Worked at -- went right from high</p> <p>23 school, worked for a bank, PSFS, as a teller in</p> <p>24 1980. Part-time school at night at Holy Family</p>

4 (Pages 10 to 13)

<p style="text-align: center;">Page 10</p> <p>1 College and U of P and Wharton for a period of 2 time. Never finished my graduate, though, never 3 got my degree. Worked there for eight years until 4 1988.</p> <p>5 Q. Worked at PSFS?</p> <p>6 A. PSFS. Went to a small bank in Bucks 7 County, Pennsylvania, Horizon Financial, for a 8 two-year period in their retirement planning 9 division. Then I came and worked for Mellon when 10 they acquired the former PSFS or the first half of 11 former PSFS, running their operations department.</p> <p>12 I stayed there for ten years, 13 until 2000, and then I joined Commerce in 2000 and 14 worked in back room operations, what we called 15 deposit operations. And then in, I want to say 16 2005 in my current as the director of store 17 operations.</p> <p>18 Q. Were you a teller throughout your 19 tenure at PSFS?</p> <p>20 A. No, I was only a teller for about a 21 year. I wasn't a very good teller.</p> <p>22 Q. What did you do after that?</p> <p>23 A. I was a CSR, customer service 24 representative where you sold products on the</p>	<p style="text-align: center;">Page 12</p> <p>1 mergers and acquisitions of other banks that they 2 bought in the Pennsylvania and New Jersey area for 3 another two years, and then I actually ran what we 4 call deposit operations, which would be 5 reconciliation; customer account information on the 6 system, CIF, it's called; retirement plans, as 7 well; call center; a variety of back support areas 8 to the retail front end.</p> <p>9 Q. When you did the -- when you worked 10 on the acquisition, did you work out of Pittsburgh 11 or Philadelphia?</p> <p>12 A. Philadelphia.</p> <p>13 Q. Have you ever worked out of 14 Pittsburgh for the bank?</p> <p>15 A. No.</p> <p>16 Q. On an ongoing basis.</p> <p>17 A. No.</p> <p>18 Q. So why did you make the move from 19 Mellon to TD, I guess, or Commerce?</p> <p>20 A. Commerce at the time.</p> <p>21 So Mellon Bank was selling off 22 a lot of their retail divisions, they started with 23 the credit card, I can't remember a date, and the 24 writing was on the wall that probably the retail</p>
<p style="text-align: center;">Page 11</p> <p>1 platform, and I worked in their retirement 2 planning for the rest -- remainder of time, six 3 years.</p> <p>4 Q. Were you on the retail side?</p> <p>5 A. Yes, always retail.</p> <p>6 Q. When I say the retail side, what's 7 your understanding of that?</p> <p>8 A. The retail banking, consumer banking 9 branches.</p> <p>10 Q. Okay. And at Horizon Financial, what 11 did you do there?</p> <p>12 A. Retirement planning there, too.</p> <p>13 Q. That's on the retail side?</p> <p>14 A. Yes.</p> <p>15 Q. What were you doing in retirement 16 planning?</p> <p>17 A. I managed the IRA department for 18 them.</p> <p>19 Q. Okay. And then after that, you went 20 to Mellon again?</p> <p>21 A. Uh-huh.</p> <p>22 Q. What did you do at Mellon?</p> <p>23 A. I worked on the acquisition and the 24 merger of PSFS for the first two years, worked on</p>	<p style="text-align: center;">Page 13</p> <p>1 bank was next to go, and a former colleague of 2 mine at the bank called me and said, "Do you want 3 to come work at Commerce." So I did.</p> <p>4 Q. And when you went into Commerce Bank, 5 what was your position on hiring?</p> <p>6 A. I was vice president of deposit 7 operations.</p> <p>8 Q. What was the responsibilities of 9 vice president of deposit operations? And this 10 was in 2005, correct?</p> <p>11 A. No, 2000.</p> <p>12 Q. 2000.</p> <p>13 A. Uh-huh. So I ran the support areas 14 for the retail bank, every support area you could 15 think of: Electronic banking, debit/ATM card, 16 wire transfer, CIF, again, which is customer 17 information files, didn't have an IRA department 18 then, but at a period of time, loss prevention. 19 Pretty much that was it.</p> <p>20 Q. And you were in that position from 21 when to when?</p> <p>22 A. Started in April 2000 and I probably 23 ran till about 2004.</p> <p>24 Q. And in that position were you -- did</p>

<p style="text-align: center;">Page 14</p> <p>1 you consider that a policy making position?</p> <p>2 A. Yeah. I would say yes.</p> <p>3 Q. And what types of policy decisions</p> <p>4 were you involved in in that position?</p> <p>5 A. How products would be set up on the</p> <p>6 system, how we would manage the policies and</p> <p>7 procedures of the system. I don't know if that</p> <p>8 answers your question.</p> <p>9 Q. When you say how projects would be</p> <p>10 set up on the system and how you would manage, I</p> <p>11 guess, those products --</p> <p>12 A. Uh-huh.</p> <p>13 MR. HARVEY: Objection.</p> <p>14 THE WITNESS: Projects.</p> <p>15 BY MR. FODERA:</p> <p>16 Q. Projects. I'm sorry. Can you tell</p> <p>17 me, is that -- were those policy decisions that</p> <p>18 were unique to your position or was it a</p> <p>19 position -- decisions by committee? Just explain</p> <p>20 the overall structure of the way decisions were</p> <p>21 made with regard to policy that you were involved</p> <p>22 in from 2000 to 2004.</p> <p>23 A. So typically it would be, you know, a</p> <p>24 group of people, it wasn't one independent person</p>	<p style="text-align: center;">Page 16</p> <p>1 that depending upon the nature of the particular</p> <p>2 project, the committee members may change?</p> <p>3 MR. HARVEY: Same objection.</p> <p>4 BY MR. FODERA:</p> <p>5 Q. In one particular project you may</p> <p>6 have four committee members from four different</p> <p>7 areas of the bank, and in another project you may</p> <p>8 have four committee members from four other --</p> <p>9 from other parts of the bank.</p> <p>10 MR. HARVEY: Let me just seek a</p> <p>11 clarification. When you refer to</p> <p>12 committee, he didn't testify about formal</p> <p>13 committees; he just testified about people</p> <p>14 being involved.</p> <p>15 MR. FODERA: Fair enough. Fair</p> <p>16 enough.</p> <p>17 BY MR. FODERA:</p> <p>18 Q. Let me back up. When you utilized</p> <p>19 the term committee, what were you referring to?</p> <p>20 A. Project teams.</p> <p>21 Q. Okay. And is that nomenclature that</p> <p>22 was used at TD Bank at the time, project teams, or</p> <p>23 is that an informal designation that you're giving</p> <p>24 it?</p>
<p style="text-align: center;">Page 15</p> <p>1 making the decision, that's for sure, and we would</p> <p>2 come up with a recommendation relative to the</p> <p>3 product or the process or the service that was</p> <p>4 being implemented or changed.</p> <p>5 Q. Okay.</p> <p>6 A. That could be relative to many</p> <p>7 things, it could be customer experience, it could</p> <p>8 be regulatory, it could be compliance issues.</p> <p>9 Q. Sure.</p> <p>10 A. It could be AML/BSA. I mean there's</p> <p>11 millions of things. And then we would have a</p> <p>12 committee of people that would work on the</p> <p>13 project, and then we would bump it up through our</p> <p>14 executive team for approval.</p> <p>15 Q. Would it be fair to say that</p> <p>16 depending upon the nature of the product, the</p> <p>17 committee members would change?</p> <p>18 MR. HARVEY: I'm going to</p> <p>19 object to the form of that question.</p> <p>20 MR. FODERA: You can answer the</p> <p>21 question.</p> <p>22 THE WITNESS: I'm sorry?</p> <p>23 BY MR. FODERA:</p> <p>24 Q. Would it be a fair characterization</p>	<p style="text-align: center;">Page 17</p> <p>1 A. I'm sorry. I don't understand the</p> <p>2 question.</p> <p>3 Q. I'm not trying to confuse you. I</p> <p>4 just want to know what you guys called these</p> <p>5 committees back then.</p> <p>6 A. Oh, project teams would be a</p> <p>7 committee that was -- it could be called</p> <p>8 committee, it could be project teams.</p> <p>9 Q. Okay.</p> <p>10 A. It could be informal, it could be a</p> <p>11 group of people sitting in a room. I mean</p> <p>12 Commerce wasn't as formal relative to project</p> <p>13 management like I am today with TD Bank, their</p> <p>14 project teams.</p> <p>15 Q. Even though Commerce wasn't as formal</p> <p>16 with regard to project teams or committees, there</p> <p>17 were committees that were organized committees at</p> <p>18 Commerce, correct? And if you wanted to, if you</p> <p>19 had an assignment to come up with a new product,</p> <p>20 there would be people assigned to that committee</p> <p>21 to come up with a new product or to address a new</p> <p>22 product; is that correct?</p> <p>23 A. True.</p> <p>24 Q. And those people would come together,</p>

<p style="text-align: center;">Page 18</p> <p>1 have several meetings, together or apart, come up 2 with recommendations, generally; is that correct? 3 A. True. 4 Q. And those recommendations would be 5 placed with someone or some other committee, 6 correct? I just want to understand the structure 7 here. 8 A. Yeah. I mean we weren't very 9 committee driven. Let me just put that out there. 10 Q. All right. 11 A. So there was a small group of people, 12 basically, so we would get together, outline what 13 we thought the product, the service, the system 14 should look like, and then that would be referred 15 into executive management for review. 16 Q. And at the time that you were 17 involved in these policy decisions from 2000 to 18 2004, who comprised the executive committee? 19 MR. HARVEY: Objection. He 20 didn't say executive committee; I think he 21 said executive management. 22 MR. FODERA: Well, he said 23 committee, but whatever the nomenclature 24 would be.</p>	<p style="text-align: center;">Page 20</p> <p>1 Q. Could you just do me a favor and just 2 draw the tree out for me, at the top. 3 A. Starting with me? 4 Q. Starting with -- yeah, you could 5 start with you and go up or start at the top and 6 go down. 7 A. That's the best I can recall. 8 Q. Okay. And this is -- 9 A. There's probably others here on the 10 commercial side of the bank. I don't know them as 11 well. 12 Q. This is TD Bank 2004? 13 A. Commerce Bank. 14 Q. I'm sorry, Commerce Bank. And can 15 you put some timeframe on it? 16 A. 2000 to -- I'd say 2000 to 2004. 17 Q. 2000 to 2004? 18 A. Uh-huh. 19 Q. And that's an approximation. 20 A. Yeah. 21 Q. And what was Vernon Hill? 22 A. He was the chairman, president. 23 Q. Chairman of Commerce. And then who 24 was...</p>
<p style="text-align: center;">Page 19</p> <p>1 THE WITNESS: Management would 2 be a better term. 3 MR. FODERA: Okay. 4 THE WITNESS: My boss? You 5 want -- 6 BY MR. FODERA: 7 Q. Okay, that's a good start. 8 A. Carlo DiToro was the head of all 9 operations at the bank. 10 Q. And that's all banking operations? 11 A. Yes. Retail. Not loans. 12 Q. All retail banking operations. 13 A. Not lending. 14 Q. All right. What is under all retail 15 banking operations? 16 A. Everything that I had in addition to 17 we also had what we call item processing, which is 18 check processing. 19 Q. On this tree, now, Carlos (sic) is 20 here and you're down here. How many people are on 21 par with you at that time? 22 A. Just one other at the time. 23 Q. And then who's above Carlos? 24 A. Dennis DiFlorio.</p>	<p style="text-align: center;">Page 21</p> <p>1 A. My writing is horrible. 2 Q. -- Dennis... 3 A. DiFlorio. 4 Q. -- DiFlorio? 5 A. Right. 6 Q. What was his position? 7 A. He was executive vice president then 8 of retail banking. 9 Q. Of retail banking. And John 10 Cunningham was -- 11 A. Marketing. 12 Q. And then there's a part of the tree 13 that's not on this diagram that would have been 14 the -- 15 A. Commercial bank. 16 Q. -- commercial banking. Fine. And 17 Carlos reported to Dennis? 18 A. Yes. 19 Q. What's Carlos' last name? 20 A. DiToro. 21 Q. And then you reported to Carlos? 22 A. Yes. 23 Q. And then underneath you, let's put 24 you at the top of this tree.</p>

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<p>1 A. Taxing here on names.</p> <p>2 Q. If you just want to put positions,</p> <p>3 that's okay, too.</p> <p>4 A. These are the three main ones at the</p> <p>5 time that I can recall.</p> <p>6 MR. FODERA: We'll just mark</p> <p>7 this two-page document as Exhibit Number-1.</p> <p>8 BY MR. FODERA:</p> <p>9 Q. And what was Barbara Evans' position?</p> <p>10 MR. HARVEY: Do you want to</p> <p>11 call that Plaintiffs' Exhibit-1?</p> <p>12 MR. FODERA: Plaintiffs'</p> <p>13 Exhibit-1 is fine. Or we'll call it</p> <p>14 actually Grimmer-1.</p> <p>15 (Document received and marked</p> <p>16 for identification Plaintiffs' Exhibit</p> <p>17 Grimmer-1, Handdrawn Chart, consisting of</p> <p>18 2 pages.)</p> <p>19 BY MR. FODERA:</p> <p>20 Q. Barbara Evans?</p> <p>21 A. She was savings and time deposit</p> <p>22 department.</p> <p>23 Q. And Bob?</p> <p>24 A. I don't know Bob's -- I can't</p>	<p>1 Q. Yes.</p> <p>2 A. 1986, I got it, and probably lapsed</p> <p>3 in '88 when I left PSFS.</p> <p>4 Q. Any other formal certificates or</p> <p>5 formal training?</p> <p>6 A. No.</p> <p>7 Q. How about now, maybe it's voluminous,</p> <p>8 maybe it's not, but can you give me an idea of</p> <p>9 bank training?</p> <p>10 A. Oh, lots of bank training.</p> <p>11 Q. Generally would that be a range from</p> <p>12 a day to a couple-of-day seminar on a given topic</p> <p>13 or would it take some other form?</p> <p>14 A. Over thirty years it could be a day,</p> <p>15 it could be a couple days, it could be a week.</p> <p>16 Q. You said a bit earlier that TD Bank,</p> <p>17 and I'm going to paraphrase you, was a little bit</p> <p>18 more formal with regard to committees than</p> <p>19 Commerce Bank, or words to that effect. Do you</p> <p>20 recall that testimony?</p> <p>21 A. Yes.</p> <p>22 Q. What did you mean by that?</p> <p>23 A. They have a very distinguished</p> <p>24 project management philosophy at TD Bank.</p>
Page 23	Page 25
<p>1 remember his last name.</p> <p>2 Q. Okay, that's fine. He's --</p> <p>3 A. Electronic banking.</p> <p>4 Q. And?</p> <p>5 A. Mamie Prout.</p> <p>6 Q. What was --</p> <p>7 A. She was CIF.</p> <p>8 Q. What is CIF?</p> <p>9 A. Customer information files.</p> <p>10 Q. Let me go back just a little bit.</p> <p>11 You had said earlier that you took courses up at</p> <p>12 Holy Family and some courses over at Penn and</p> <p>13 never got a bachelor's degree.</p> <p>14 A. True.</p> <p>15 Q. How about additional formal education</p> <p>16 aside from any seminars in banking besides Penn</p> <p>17 and Holy Family, any certificate education?</p> <p>18 A. I was a licensed broker Series 7,</p> <p>19 Series 6.</p> <p>20 Q. Do you still maintain that license?</p> <p>21 A. No.</p> <p>22 Q. Approximately when did you get it,</p> <p>23 approximately when did it lapse?</p> <p>24 A. Approximately?</p>	<p>1 Q. What does that mean?</p> <p>2 A. In other words, there's templates and</p> <p>3 you have to document every step of the way when</p> <p>4 you do a project, and there are certain</p> <p>5 departments that are strictly project management</p> <p>6 departments.</p> <p>7 Q. What actually is the date that TD</p> <p>8 took over Commerce?</p> <p>9 A. The formal date would have been May</p> <p>10 2008.</p> <p>11 Q. And at what point in time, if at all,</p> <p>12 did you begin working on the -- on transition from</p> <p>13 Commerce to TD?</p> <p>14 A. December 2007.</p> <p>15 Q. And what were your responsibilities</p> <p>16 with regard to transition? What were your</p> <p>17 positions with regard -- what were your</p> <p>18 responsibilities with regard to the transition?</p> <p>19 A. I worked on the retail integration</p> <p>20 team.</p> <p>21 Q. We'll get back to that. After 2004,</p> <p>22 your position at Commerce changed.</p> <p>23 A. Yes.</p> <p>24 Q. What did it change to?</p>

<p style="text-align: center;">Page 26</p> <p>1 A. In 2004, I went and worked under what</p> <p>2 was called the complimentary delivery channel</p> <p>3 division.</p> <p>4 Q. Tell me what that is.</p> <p>5 A. So it's online banking, phone</p> <p>6 banking, call center. So for that year -- and ATM</p> <p>7 and debit card were in there, as well, so I was</p> <p>8 running the operations of the ATM/debit card</p> <p>9 group.</p> <p>10 Q. What does that mean?</p> <p>11 A. Just the interaction with Visa, the</p> <p>12 plastic inventory, the controls, that kind of</p> <p>13 stuff.</p> <p>14 Q. So was it a 9 to 5 desk job or did it</p> <p>15 put you out in branches or both?</p> <p>16 A. No, it was more back office. Never 9</p> <p>17 to 5, but back office.</p> <p>18 Q. At what point in time did Commerce</p> <p>19 Bank institute a gift card program?</p> <p>20 A. The formal program?</p> <p>21 Q. Well, if there's an informal program,</p> <p>22 tell me about that, too.</p> <p>23 A. There was a pilot, employee pilot in</p> <p>24 2003.</p>	<p style="text-align: center;">Page 28</p> <p>1 A. I ran the program.</p> <p>2 Q. Tell me about before the program was</p> <p>3 instituted, were you involved in the planning of</p> <p>4 the program.</p> <p>5 A. Yes.</p> <p>6 Q. In what respect?</p> <p>7 A. So I laid out how we were going to</p> <p>8 sell them, the system, how we were going to</p> <p>9 interface with the system, planned the actual</p> <p>10 pilot events.</p> <p>11 Q. When you say sell them, what does</p> <p>12 that mean?</p> <p>13 A. In other words, what was the process</p> <p>14 going to be when we issued them to the employees</p> <p>15 at the time.</p> <p>16 Q. What was that process that you all</p> <p>17 determined you were going to do?</p> <p>18 A. So we would get the plastic, which is</p> <p>19 the card, we would have a disclosure that went</p> <p>20 with it, and at an employee event, not done in the</p> <p>21 retail store environment, two weekends --</p> <p>22 I'm sorry, not "two weekends," my apologies, two</p> <p>23 events prior to the holiday, the Christmas holiday</p> <p>24 of 2003, we would have employee events and we</p>
<p style="text-align: center;">Page 27</p> <p>1 Q. Tell me about the employee pilot</p> <p>2 program.</p> <p>3 MR. HARVEY: Object to the form</p> <p>4 of the question. What do you want to know?</p> <p>5 MR. FODERA: I want to know</p> <p>6 what he knows.</p> <p>7 MR. HARVEY: Object to the form</p> <p>8 of the question.</p> <p>9 MR. FODERA: You can answer.</p> <p>10 THE WITNESS: Okay. It was a</p> <p>11 pilot to see exactly how the gift card</p> <p>12 program would be received externally and</p> <p>13 the usage and the merchant process, did</p> <p>14 they know what to do with it, meaning the</p> <p>15 merchants out there, so if I went and</p> <p>16 bought a card and I went out and sold it --</p> <p>17 used it as a recipient, would I have a good</p> <p>18 experience.</p> <p>19 BY MR. FODERA:</p> <p>20 Q. Were you involved in that pilot</p> <p>21 program?</p> <p>22 A. Yes.</p> <p>23 Q. How were you involved in that pilot</p> <p>24 program?</p>	<p style="text-align: center;">Page 29</p> <p>1 would actually issue the cards to them.</p> <p>2 Q. Did the employees pay for the cards</p> <p>3 or --</p> <p>4 A. Yes.</p> <p>5 Q. And "issue the employee the card."</p> <p>6 Were they in specific denominations or did that</p> <p>7 matter or they just --</p> <p>8 A. They had to be between 25 and 500 in</p> <p>9 the denomination.</p> <p>10 (Discussion held off the</p> <p>11 record.)</p> <p>12 BY MR. FODERA:</p> <p>13 Q. More about this pilot program. So</p> <p>14 you had this event or two events --</p> <p>15 A. Two events.</p> <p>16 Q. -- where the employees knew that they</p> <p>17 were going to be able or have the ability to</p> <p>18 purchase this new product.</p> <p>19 A. Yes.</p> <p>20 Q. And were you, at this point, writing</p> <p>21 script for the sales of this product?</p> <p>22 A. It wasn't that formal at the time.</p> <p>23 Q. What was the -- what was given to the</p> <p>24 employees? You said --</p>

<p style="text-align: center;">Page 30</p> <p>1 A. So there was a greeting card with the</p> <p>2 disclosure and the card.</p> <p>3 Q. The box?</p> <p>4 A. The box wasn't introduced until the</p> <p>5 next year.</p> <p>6 Q. That's fine. And at this point in</p> <p>7 time were there any fees associated with</p> <p>8 activating the card?</p> <p>9 A. No.</p> <p>10 Q. Were there any fees associated with</p> <p>11 dormancy?</p> <p>12 MR. HARVEY: I'm going to</p> <p>13 object to the form of the question. You</p> <p>14 might want to just clarify that.</p> <p>15 BY MR. FODERA:</p> <p>16 Q. Were there any fees at all? Any fees</p> <p>17 at all?</p> <p>18 A. There's a maintenance fee.</p> <p>19 Q. Was the maintenance fee waived for</p> <p>20 any period of time?</p> <p>21 A. Not for the pilot.</p> <p>22 Q. So you get a \$25 card and the next</p> <p>23 month there's a \$2.50 charge?</p> <p>24 A. Oh, I apologize. I thought you meant</p>	<p style="text-align: center;">Page 32</p> <p>1 Q. What's that recollection generally?</p> <p>2 A. That it was too new.</p> <p>3 Q. What do you mean?</p> <p>4 A. That merchants weren't really sure</p> <p>5 what to do with it.</p> <p>6 Q. Was it a Visa endorsed card?</p> <p>7 A. Yes, it was.</p> <p>8 Q. Did you have any understanding at the</p> <p>9 time as to whether or not if a person presented a</p> <p>10 card for a purchase that was more than the value</p> <p>11 of the card, whether that card would be outright</p> <p>12 rejected or whether that card would be accepted up</p> <p>13 to the point of the value of the card?</p> <p>14 MR. HARVEY: You're asking for</p> <p>15 his understanding at the time?</p> <p>16 MR. FODERA: Exactly.</p> <p>17 THE WITNESS: I'm sorry.</p> <p>18 Repeat the question.</p> <p>19 BY MR. FODERA:</p> <p>20 Q. What I want to know, were you getting</p> <p>21 feedback that, "I got this \$25 card and I went to</p> <p>22 the merchant and bought a \$50 item, and they said,</p> <p>23 'It's declined,' or did they say, 'You have \$25 on</p> <p>24 this card?'"</p>
<p style="text-align: center;">Page 31</p> <p>1 waived in general. It was a year after. It was</p> <p>2 good for a year, and then the maintenance fee</p> <p>3 would kick in after the year.</p> <p>4 Q. On the flip side of that, I think you</p> <p>5 mentioned that you wanted to see how the card</p> <p>6 would be received by retailers.</p> <p>7 A. Yes.</p> <p>8 Q. Tell me about those efforts and what</p> <p>9 you did with regard to that.</p> <p>10 A. We did -- after we did the pilot with</p> <p>11 the employees, we asked them to provide us</p> <p>12 feedback on the experience of the recipients on</p> <p>13 how they did when they went to a merchant: Did</p> <p>14 they know what to do with it, did it work.</p> <p>15 Q. What, if anything, did you learn --</p> <p>16 first of all, is there material, formal material</p> <p>17 that you know of that you've seen with regard to</p> <p>18 that feedback from the employees in that pilot</p> <p>19 program?</p> <p>20 A. I don't recall. It's a long time</p> <p>21 ago.</p> <p>22 Q. Do you have a recollection of what</p> <p>23 the feedback was generally?</p> <p>24 A. General.</p>	<p style="text-align: center;">Page 33</p> <p>1 A. I don't remember exactly what the</p> <p>2 feedback we got was. From what I can remember, I</p> <p>3 mean there was cases where they got turned down,</p> <p>4 the card didn't work. That's what we would get</p> <p>5 back.</p> <p>6 Q. The card didn't work is what they're</p> <p>7 telling you?</p> <p>8 A. Yes. That's what the recipients were</p> <p>9 telling us: "I went there, the card didn't work."</p> <p>10 Q. In this employee pilot program was</p> <p>11 it, to your knowledge, generally the employee who</p> <p>12 was using the card or were they giving the cards</p> <p>13 away as gifts?</p> <p>14 A. I can't tell you what the employee</p> <p>15 did with the cards after we sold them to them.</p> <p>16 Q. But you're getting feedback from them</p> <p>17 with regard to the use of the card?</p> <p>18 A. Right. I can't remember exactly what</p> <p>19 the feedback was. It was a long time ago.</p> <p>20 Q. Is there any documentation with</p> <p>21 regard to that at all?</p> <p>22 A. I don't know.</p> <p>23 Q. If I wanted to -- if you wanted to</p> <p>24 find out if there was documentation with regard to</p>

<p style="text-align: center;">Page 34</p> <p>1 that, where would you look?</p> <p>2 A. No clue at this point.</p> <p>3 Q. What was the formal name of this</p> <p>4 program, if they had one?</p> <p>5 A. Employee pilot gift card.</p> <p>6 Q. Do you use Outlook mail?</p> <p>7 A. No.</p> <p>8 Q. What's your mail system?</p> <p>9 A. Lotus Notes.</p> <p>10 Q. How long have you used Lotus Notes?</p> <p>11 A. Ever since I worked for Commerce</p> <p>12 Bank.</p> <p>13 Q. Are those Lotus Notes deleted at any</p> <p>14 given time?</p> <p>15 Do you have the ability to</p> <p>16 delete your own emails?</p> <p>17 A. Yes.</p> <p>18 Q. Do you delete your own emails?</p> <p>19 A. Yes.</p> <p>20 Q. How often do you delete your emails?</p> <p>21 A. Every day.</p> <p>22 Q. Now, they go into a trash folder?</p> <p>23 A. Yes.</p> <p>24 Q. Or a deleted file folder?</p>	<p style="text-align: center;">Page 36</p> <p>1 A. Sorry. Unless I haven't deleted it,</p> <p>2 I can see it.</p> <p>3 Q. Do you have emails that go back to</p> <p>4 2004?</p> <p>5 A. Yes.</p> <p>6 Q. Do you have emails with regard to the</p> <p>7 pilot program that go back to 2004?</p> <p>8 A. I don't know what I have exactly from</p> <p>9 2004.</p> <p>10 Q. Do you keep folders for emails?</p> <p>11 A. I do sometimes, yes.</p> <p>12 Q. Did you in 2004?</p> <p>13 MR. HARVEY: Objection. The</p> <p>14 pilot program was in 2003.</p> <p>15 MR. FODERA: I'm sorry. 2003.</p> <p>16 THE WITNESS: Holiday season</p> <p>17 2003.</p> <p>18 BY MR. FODERA:</p> <p>19 Q. But the feedback would have come in</p> <p>20 the beginning of 2004, I would imagine, is that</p> <p>21 correct?</p> <p>22 A. But it started in 2003 if that person</p> <p>23 used the card.</p> <p>24 Q. Did you keep folders back then,</p>
<p style="text-align: center;">Page 35</p> <p>1 A. Trash.</p> <p>2 Q. Can you recover that trash folder?</p> <p>3 A. Clarify your question for me.</p> <p>4 Q. Well, in some programs you can delete</p> <p>5 an email and it will go into a deleted file or a</p> <p>6 trash file, and if you go into that folder, you</p> <p>7 can click on that and you can see what's been</p> <p>8 deleted, and then if you want to get rid of that,</p> <p>9 you have to go through an additional step.</p> <p>10 A. Yes.</p> <p>11 Q. So my question to you now, in that</p> <p>12 deleted file or in the trash or where it goes</p> <p>13 after you deleted it file, do you delete that</p> <p>14 file.</p> <p>15 A. No. I don't, personally.</p> <p>16 Q. Do you have an understanding as to</p> <p>17 whether or not that file is deleted at any given</p> <p>18 time?</p> <p>19 A. I don't know.</p> <p>20 Q. If you wanted to see an email that</p> <p>21 you wrote in 2004, do you have the ability to do</p> <p>22 that?</p> <p>23 A. No.</p> <p>24 Q. Go ahead.</p>	<p style="text-align: center;">Page 37</p> <p>1 electronic folders?</p> <p>2 A. I'm not really good in my email. I</p> <p>3 mean I have folders. How well I use them... I</p> <p>4 usually leave everything in the inbox.</p> <p>5 Q. Did you designate an employee or a</p> <p>6 representative of Commerce Bank to work with this</p> <p>7 pilot program?</p> <p>8 A. Did I personally designate anybody?</p> <p>9 Q. Or was one designated other than you?</p> <p>10 You told me you ran the program.</p> <p>11 A. Right, I ran the program.</p> <p>12 Q. Did you have someone who reported to</p> <p>13 you who was coordinating all of the responses?</p> <p>14 A. No.</p> <p>15 Q. Were you talking individually to the</p> <p>16 people who purchased the cards?</p> <p>17 A. No.</p> <p>18 Q. Who was?</p> <p>19 A. The clerks that sold the cards.</p> <p>20 Q. How were they communicating what</p> <p>21 people were telling them?</p> <p>22 A. No, no, no. So somebody sold the</p> <p>23 card. That was an event. So we sat there and</p> <p>24 they used the little machine and little cards and</p>

<p style="text-align: center;">Page 38</p> <p>1 they sold the cards.</p> <p>2 Q. Right.</p> <p>3 A. Employee feedback was obtained by</p> <p>4 marketing.</p> <p>5 Q. Okay.</p> <p>6 A. I'm sorry, pilot feedback was</p> <p>7 obtained from marketing.</p> <p>8 Q. Who in marketing was designated to</p> <p>9 get that feedback, if you know?</p> <p>10 A. I can't specifically give you the</p> <p>11 name.</p> <p>12 Q. What position in marketing was</p> <p>13 designated to get that feedback, if you know?</p> <p>14 A. It would have been on the product</p> <p>15 team.</p> <p>16 Q. Who comprised the product team in the</p> <p>17 end of 2003, beginning of 2004?</p> <p>18 A. Kevin Barry.</p> <p>19 Q. Kevin Barry? B-A-R-R-Y?</p> <p>20 A. Yes.</p> <p>21 Q. Is Kevin still employed at TD Bank?</p> <p>22 A. No, he's not.</p> <p>23 Q. When did he leave TD Bank?</p> <p>24 A. I don't recall.</p>	<p style="text-align: center;">Page 40</p> <p>1 Q. So, to your knowledge, did product</p> <p>2 generate reports to senior management with regard</p> <p>3 to this program, this pilot program?</p> <p>4 A. Not to my knowledge. I never saw a</p> <p>5 report.</p> <p>6 Q. Did you come to the understanding</p> <p>7 that there was feedback in the form of reports to</p> <p>8 senior management on the pilot gift card program?</p> <p>9 A. Say it one more time.</p> <p>10 Q. Did you come to the understanding</p> <p>11 that there were reports generated to senior</p> <p>12 management with regard to the outcome of the pilot</p> <p>13 gift card program and what they learned about it</p> <p>14 and how it was received and all of those marketing</p> <p>15 issues? And when I say management, I mean</p> <p>16 executive management.</p> <p>17 A. I never saw a report.</p> <p>18 Q. Okay.</p> <p>19 A. But typically in a pilot program in</p> <p>20 banking you're going to provide feedback in a</p> <p>21 report.</p> <p>22 Q. Sure. So it wouldn't be -- you would</p> <p>23 expect that there was --</p> <p>24 A. Right.</p>
<p style="text-align: center;">Page 39</p> <p>1 Q. Did he leave Commerce or TD?</p> <p>2 A. I can't say for sure.</p> <p>3 Q. Can you approximate for me?</p> <p>4 Approximation's fine.</p> <p>5 MR. HARVEY: If you can do it,</p> <p>6 if you have a reasonable basis for</p> <p>7 approximating.</p> <p>8 MR. FODERA: Sure, absolutely.</p> <p>9 THE WITNESS: I can tell you it</p> <p>10 was after the announcement of TD Bank</p> <p>11 merger of Commerce.</p> <p>12 BY MR. FODERA:</p> <p>13 Q. Okay. Were there ever any reports</p> <p>14 generated by you or designated to be generated by</p> <p>15 you with regard to this pilot program for the</p> <p>16 benefit of more senior executives?</p> <p>17 A. Not by me.</p> <p>18 Q. By anybody designated by you?</p> <p>19 A. No.</p> <p>20 Q. You ran the program.</p> <p>21 A. No.</p> <p>22 Q. So how did the senior management know</p> <p>23 whether the program was a success or not?</p> <p>24 A. That would be product.</p>	<p style="text-align: center;">Page 41</p> <p>1 Q. -- some written feedback, some formal</p> <p>2 written feedback to senior management with regard</p> <p>3 to this program?</p> <p>4 A. I don't know how formal, but there</p> <p>5 would have been written report feedback.</p> <p>6 Q. With regard to your responsibility</p> <p>7 running that pilot program, other than the</p> <p>8 implementation of that pilot program, did you have</p> <p>9 any ongoing responsibilities with regard to the</p> <p>10 pilot program?</p> <p>11 A. No, because the pilot stopped and we</p> <p>12 moved on to the next thing.</p> <p>13 Q. Sure. And that was right after the</p> <p>14 Christmas season 2003?</p> <p>15 A. 2003.</p> <p>16 Q. Did you have a team that you utilized</p> <p>17 for this pilot program?</p> <p>18 A. Yes.</p> <p>19 Q. Who comprised that team?</p> <p>20 A. The only name I can recall was Dan</p> <p>21 Behr.</p> <p>22 Q. Dan Bear like bear in the woods?</p> <p>23 A. Like Behr in paint, B-E-H-R.</p> <p>24 Q. Is Dan Behr still employed at</p>

12 (Pages 42 to 45)

<p style="text-align: center;">Page 42</p> <p>1 TD Bank?</p> <p>2 A. No, he's not.</p> <p>3 Q. When did -- did he leave TD or</p> <p>4 Commerce?</p> <p>5 A. I don't recall.</p> <p>6 Q. Can you approximate for me?</p> <p>7 A. I think it was after the acquisition</p> <p>8 of TD.</p> <p>9 Q. Do you know where Dan went?</p> <p>10 A. No.</p> <p>11 Q. Did you provide a recommendation for</p> <p>12 Dan?</p> <p>13 A. No, I did not.</p> <p>14 Q. Do you know if he's still in banking?</p> <p>15 A. No, I do not.</p> <p>16 Q. Do you know where he lived?</p> <p>17 A. Yes, I do.</p> <p>18 Q. Where?</p> <p>19 A. Langhorne, Pennsylvania.</p> <p>20 Q. Can you approximate his age for me?</p> <p>21 A. 42.</p> <p>22 Q. Do you know his email?</p> <p>23 A. No.</p> <p>24 Q. Do you know his phone number?</p>	<p style="text-align: center;">Page 44</p> <p>1 you that contact information if you want to</p> <p>2 depose that person as a former employee of</p> <p>3 our client, we can actually help you</p> <p>4 facilitate that. I don't think he needs to</p> <p>5 pull out his phone and be providing</p> <p>6 information from his phone on former</p> <p>7 employees of the bank, particularly their</p> <p>8 home numbers or whatever he may have.</p> <p>9 BY MR. FODERA:</p> <p>10 Q. Do you have his email number in your</p> <p>11 phone, his email address?</p> <p>12 A. No.</p> <p>13 Q. Do you have a phone or a PDA?</p> <p>14 A. I have a PDA.</p> <p>15 Q. Even though you were not involved --</p> <p>16 or at least you've testified -- I want to make</p> <p>17 sure I'm clear here. After this pilot program was</p> <p>18 implemented, you were no longer involved in the</p> <p>19 pilot program, it was done, over, and you weren't</p> <p>20 involved?</p> <p>21 A. The pilot stopped.</p> <p>22 Q. Is that a fair characterization?</p> <p>23 A. Yes.</p> <p>24 Q. Even though you weren't involved --</p>
<p style="text-align: center;">Page 43</p> <p>1 A. No.</p> <p>2 Um...</p> <p>3 Q. Is it in your phone?</p> <p>4 A. Yes.</p> <p>5 Q. Would you pull out your phone and</p> <p>6 tell it to me?</p> <p>7 MR. HARVEY: I'm going to</p> <p>8 object to the form of the question.</p> <p>9 And you can put a request in</p> <p>10 for that and we'll look at that.</p> <p>11 MR. FODERA: Why?</p> <p>12 MR. HARVEY: Because I'm not</p> <p>13 going to have him pulling out his phone and</p> <p>14 providing information right now, especially</p> <p>15 a home number or that may be of a personal</p> <p>16 nature. We will take a request for that</p> <p>17 and we will look at that and we'll respond.</p> <p>18 You're here to take oral testimony from</p> <p>19 this witness.</p> <p>20 MR. FODERA: I'm here to get</p> <p>21 what this witness knows. One of the things</p> <p>22 he knows and has available to him is</p> <p>23 contact information for this person.</p> <p>24 MR. HARVEY: And I can provide</p>	<p style="text-align: center;">Page 45</p> <p>1 even though the pilot had stopped, did you at some</p> <p>2 point come to the knowledge that the pilot program</p> <p>3 had been successful?</p> <p>4 A. Validate what you mean by successful</p> <p>5 for me.</p> <p>6 Q. Fair enough. Did you come to the</p> <p>7 knowledge that Commerce Bank wanted to institute a</p> <p>8 gift card program for the benefit of the general</p> <p>9 depositing public at TD Bank?</p> <p>10 A. So clarify, based on the pilot?</p> <p>11 Q. Okay, good clarification.</p> <p>12 A. Is that what you're asking me, based</p> <p>13 on the pilot?</p> <p>14 Q. Well, let me withdraw that question</p> <p>15 and say: To your understanding, what were the</p> <p>16 reasons that TD Bank decided to institute the</p> <p>17 gift card program to their depositors?</p> <p>18 A. A competitive edge and it met our</p> <p>19 model.</p> <p>20 Q. What do you mean by competitive edge?</p> <p>21 A. Other banks, particularly American</p> <p>22 Express, was launching a gift card program that</p> <p>23 year, that year being 2004, and it was part of our</p> <p>24 convenience model.</p>

<p style="text-align: center;">Page 46</p> <p>1 Q. And the convenience model being what?</p> <p>2 A. That I can come in and buy a</p> <p>3 gift card at a branch, it's very convenient.</p> <p>4 Q. Were you involved, after the pilot</p> <p>5 program, in the organization of the gift card, the</p> <p>6 ongoing gift card program?</p> <p>7 A. Yes.</p> <p>8 Q. And did you run the ongoing gift card</p> <p>9 program?</p> <p>10 A. From an operational standpoint, yes.</p> <p>11 Q. Explain to me what you mean and</p> <p>12 everything that's entailed in the operational</p> <p>13 standpoint of the running of the gift card</p> <p>14 program.</p> <p>15 A. So at the time it would be more</p> <p>16 relative to assuring that we had the inventory:</p> <p>17 The plastic, the box, the ribbon, the</p> <p>18 greeting card, and the terms and conditions.</p> <p>19 Q. Anything else?</p> <p>20 A. I was involved in reviewing training</p> <p>21 materials, our WOW Answer Guide, which is the</p> <p>22 policy and procedure manual that is used by the</p> <p>23 stores.</p> <p>24 Q. Anything else?</p>	<p style="text-align: center;">Page 48</p> <p>1 A. Correct.</p> <p>2 Q. How did you find that out?</p> <p>3 A. From my boss at the time.</p> <p>4 Q. And what did your boss say?</p> <p>5 A. I apologize. Let me clarify.</p> <p>6 Q. Go ahead.</p> <p>7 A. From an executive but wasn't my boss</p> <p>8 at the time.</p> <p>9 Q. Okay.</p> <p>10 A. She called me and said, "Can we do</p> <p>11 gift cards this year."</p> <p>12 Q. And walk me through what occurs next.</p> <p>13 A. Next it's to get the look and feel of</p> <p>14 the card, order the card, review the procedures</p> <p>15 with the -- I'm sorry, review the training</p> <p>16 material with our training -- formal training</p> <p>17 department, order other supplies, the greeting</p> <p>18 card, the terms and conditions, the boxes, the</p> <p>19 ribbons, assure that they're all being delivered</p> <p>20 and then sent out to all the locations.</p> <p>21 Q. Were you involved before the launch</p> <p>22 of the gift card program in organizational</p> <p>23 meetings with regard to disclosures on the</p> <p>24 gift card?</p>
<p style="text-align: center;">Page 47</p> <p>1 A. And then daily reporting on sales.</p> <p>2 Q. Let's back up to -- at what point in</p> <p>3 time did -- after the, and maybe it was before the</p> <p>4 pilot program, at what point in time did you come</p> <p>5 to the understanding that this was going to be</p> <p>6 launched as a full-time program?</p> <p>7 A. Fall of 2004.</p> <p>8 Q. So a good eight, nine months after</p> <p>9 the other program closed?</p> <p>10 A. Yes.</p> <p>11 Q. And from, say, January of 2004 until</p> <p>12 the fall of 2004, had you been involved in any</p> <p>13 organizational meetings with regard to the</p> <p>14 gift card program?</p> <p>15 MR. HARVEY: January to what</p> <p>16 month, please?</p> <p>17 MR. FODERA: Fall is what he</p> <p>18 said.</p> <p>19 THE WITNESS: Specifically, I</p> <p>20 can't recall.</p> <p>21 BY MR. FODERA:</p> <p>22 Q. Okay. And then in the fall of 2004,</p> <p>23 you found out that they were going to launch this</p> <p>24 as a full-time program?</p>	<p style="text-align: center;">Page 49</p> <p>1 A. No.</p> <p>2 Q. How is it that you were informed of</p> <p>3 the disclosures that would be on the gift card?</p> <p>4 If you were.</p> <p>5 A. I mean... You have to clarify the</p> <p>6 question. I'm not sure what you mean.</p> <p>7 Q. Well, we can both agree that there</p> <p>8 are terms and conditions attached to the</p> <p>9 gift card, right? That's not in dispute.</p> <p>10 A. Not at all.</p> <p>11 Q. And those terms and conditions</p> <p>12 originated somewhere.</p> <p>13 A. Right.</p> <p>14 Q. I'm trying to find out from you if</p> <p>15 you know how and where they originated.</p> <p>16 A. It would come from product.</p> <p>17 Q. What do you mean, "It would come from</p> <p>18 product?"</p> <p>19 A. The product gentleman at the time, I</p> <p>20 gave you his name, would work with Visa to create</p> <p>21 the disclosures, their regulations that applied to</p> <p>22 disclosures.</p> <p>23 Q. And who was that person?</p> <p>24 A. Kevin Barry.</p>

<p style="text-align: center;">Page 50</p> <p>1 Q. Kevin Barry?</p> <p>2 A. Barry, B-A-R-R-Y.</p> <p>3 Q. Is Kevin Barry still at TD Bank?</p> <p>4 A. No.</p> <p>5 Q. Did we already go through this name?</p> <p>6 MR. LALLI: Yes.</p> <p>7 MR. FODERA: Okay.</p> <p>8 BY MR. FODERA:</p> <p>9 Q. Was there anyone else responsible for</p> <p>10 disclosure that you know of?</p> <p>11 MR. HARVEY: Timeframe?</p> <p>12 MR. FODERA: Before the launch</p> <p>13 of the product.</p> <p>14 MR. HARVEY: In 2004?</p> <p>15 BY MR. FODERA:</p> <p>16 Q. I understand there's going to be</p> <p>17 changes in the disclosure. Maybe you don't know,</p> <p>18 but I think there's some changes in the</p> <p>19 disclosures over time. I'm talking about</p> <p>20 originally, before the product is actually</p> <p>21 launched. Other than Mr. Barry, was there anyone</p> <p>22 else, to your knowledge, involved in the drafting</p> <p>23 or implementing of the disclosures?</p> <p>24 A. For gift card?</p>	<p style="text-align: center;">Page 52</p> <p>1 A. Sure.</p> <p>2 Q. Would it be fair to say that your</p> <p>3 involvement was the nuts and bolts of putting the</p> <p>4 cards together and getting them to the branches</p> <p>5 and training the branches?</p> <p>6 A. Nuts and bolts of putting them</p> <p>7 together, yes. Training was with our training</p> <p>8 department.</p> <p>9 Q. That's where I'm going next. There's</p> <p>10 training materials that I've looked at and we can</p> <p>11 go over, we'll probably get to them this</p> <p>12 afternoon, there's WOW material, there's a Big</p> <p>13 Red...</p> <p>14 A. America's Got Red.</p> <p>15 Q. -- America's Got Red program.</p> <p>16 A. Yes.</p> <p>17 Q. Who put these training materials</p> <p>18 together?</p> <p>19 A. Various people, I would say, in the</p> <p>20 training department.</p> <p>21 Q. Inartfully phrased. What department</p> <p>22 put them together?</p> <p>23 A. Commerce University.</p> <p>24 Q. What is Commerce University?</p>
<p style="text-align: center;">Page 51</p> <p>1 Q. Yes.</p> <p>2 A. Yes.</p> <p>3 Q. Who?</p> <p>4 A. Dan Goldman.</p> <p>5 Q. And who is Dan Goldman?</p> <p>6 A. He was a gentleman that worked for</p> <p>7 Kevin, started that year in the gift card product.</p> <p>8 Q. Is he still with the bank?</p> <p>9 A. No.</p> <p>10 Q. Do you know when he left the bank?</p> <p>11 A. Post acquisition of TD Bank.</p> <p>12 Q. Did a lot of people leave Commerce</p> <p>13 post acquisition?</p> <p>14 A. (Indicating.)</p> <p>15 Q. You have to answer verbally.</p> <p>16 A. People left.</p> <p>17 Q. Other than Goldman and Barry, anyone</p> <p>18 else that would have been involved in the</p> <p>19 disclosures during the origination of the card</p> <p>20 program?</p> <p>21 A. I don't recall anyone else.</p> <p>22 Q. Would it be fair to say that you were</p> <p>23 not personally involved in drafting or anything</p> <p>24 having to do with the actual disclosure writing?</p>	<p style="text-align: center;">Page 53</p> <p>1 A. Our formal training department.</p> <p>2 Q. And at the time, can you tell me who</p> <p>3 was involved in the gift card program training</p> <p>4 from the training university? In other words, who</p> <p>5 put the training program together, if you know?</p> <p>6 A. So what I know is from what I recall</p> <p>7 reading recently. If I had to go back --</p> <p>8 Q. Okay.</p> <p>9 A. I know Maureen Farmer was the name.</p> <p>10 And Jen Cornish. I don't know if she was that far</p> <p>11 back, though.</p> <p>12 Q. Who are Maureen Farmer and Jen</p> <p>13 Cornish? Who are they?</p> <p>14 A. They worked in the training</p> <p>15 department.</p> <p>16 Q. Do you know if they had a hand in</p> <p>17 putting the materials together or were they</p> <p>18 trainers?</p> <p>19 A. They had a hand in putting the</p> <p>20 materials together.</p> <p>21 Q. Do you know what their positions are</p> <p>22 or were?</p> <p>23 A. Formal names, no.</p> <p>24 Q. Are either or both of them still</p>

<p style="text-align: center;">Page 54</p> <p>1 employed at TD Bank?</p> <p>2 A. Maureen, no. I believe Jen is.</p> <p>3 Q. When did Maureen leave, if you know?</p> <p>4 A. No idea.</p> <p>5 Q. Were both of them employed at</p> <p>6 Commerce Bank?</p> <p>7 A. Yes.</p> <p>8 Q. Would you be involved in training</p> <p>9 sessions with the personnel -- and we're talking</p> <p>10 about the launch program here now. Was the launch</p> <p>11 program a WOW program or American's Got Red,</p> <p>12 either one of them?</p> <p>13 A. No. WOW is a program that's ongoing.</p> <p>14 It's a staple program of the bank. WOW is a</p> <p>15 customer philosophy; it's not a program.</p> <p>16 Q. It's not just for gift cards?</p> <p>17 A. WOW?</p> <p>18 Q. WOW, yes.</p> <p>19 A. No. We have a WOW program at the</p> <p>20 bank.</p> <p>21 Q. Why don't you explain the WOW program</p> <p>22 for me in the nutshell?</p> <p>23 A. It's just a philosophy; wow your</p> <p>24 customer. That's the nutshell.</p>	<p style="text-align: center;">Page 56</p> <p>1 A. No, I think that's a good</p> <p>2 description.</p> <p>3 Q. At the time were you given and did</p> <p>4 you review the gift card launch training</p> <p>5 materials?</p> <p>6 A. Yes.</p> <p>7 Q. Did you have any input, whatsoever,</p> <p>8 in the gift card launch training materials?</p> <p>9 A. Yes.</p> <p>10 Q. What input did you have?</p> <p>11 A. I can't recall exactly what I --</p> <p>12 Q. Okay. Tell me generally.</p> <p>13 A. I would review it to make sure it</p> <p>14 made sense.</p> <p>15 Q. Would you make comments?</p> <p>16 A. I'm sure I did.</p> <p>17 Q. Would that be via email or hard copy</p> <p>18 or don't you know?</p> <p>19 A. I don't recall.</p> <p>20 Q. What was your custom and practice at</p> <p>21 the time in 2004, were you regularly using your</p> <p>22 emails and red lining on emails or would you take</p> <p>23 a hard copy or what?</p> <p>24 A. My personal practice?</p>
<p style="text-align: center;">Page 55</p> <p>1 Q. Does W-O-W mean anything?</p> <p>2 A. Wow.</p> <p>3 Q. Wow.</p> <p>4 A. It doesn't stand for anything.</p> <p>5 Q. All right. Were you involved in</p> <p>6 training either branch heads or tellers or branch</p> <p>7 personnel in the gift card launch program?</p> <p>8 A. No.</p> <p>9 Q. Did you have any oversight</p> <p>10 responsibility with regard to the training of the</p> <p>11 employees at Commerce Bank in the gift card launch</p> <p>12 program?</p> <p>13 A. No.</p> <p>14 Q. Do you know who had the overall</p> <p>15 responsibility for training employees in the</p> <p>16 gift card launch program?</p> <p>17 A. Just the university. Specific name,</p> <p>18 I can't give you.</p> <p>19 Q. Is it correct for me to refer to this</p> <p>20 as the gift card launch program in the fall of</p> <p>21 2004 or was there some other name?</p> <p>22 A. No.</p> <p>23 Q. No, it's correct, or, no, it's not</p> <p>24 correct?</p>	<p style="text-align: center;">Page 57</p> <p>1 Q. Yes.</p> <p>2 A. Email.</p> <p>3 Q. Who were you reporting to or working</p> <p>4 with in marketing during the launch?</p> <p>5 A. I didn't report to anyone in</p> <p>6 marketing.</p> <p>7 Q. Or in Commerce U?</p> <p>8 A. In Commerce University? Deb</p> <p>9 Jacovelli.</p> <p>10 Q. Deb Jacovelli?</p> <p>11 A. Jacovelli.</p> <p>12 Q. You got to spell that for the court</p> <p>13 reporter.</p> <p>14 (Discussion held off the</p> <p>15 record.)</p> <p>16 THE WITNESS: Deb, D-E-B;</p> <p>17 Jacovelli, J-A-C-O-V-E-L-L-I, I want to</p> <p>18 say.</p> <p>19 BY MR. FODERA:</p> <p>20 Q. To your knowledge, was there any time</p> <p>21 at all in either Commerce or TD Bank where there</p> <p>22 were no fees charged at any time, no maintenance</p> <p>23 fees charged at any time for cards?</p> <p>24 A. 2005.</p>

<p style="text-align: center;">Page 58</p> <p>1 Q. Tell me about when that came into 2 being and your understanding of why it came into 3 being. 4 A. Best recollection, January 2005. End 5 date, fall of 2005 I want to say or -- I'm sorry, 6 I can't confirm the exact end date. 7 Q. That's fine. 8 A. It was 2005. 9 Q. In 2005. Now, those cards that were 10 sold at the launch date of fall of 2004, did they 11 have fees, maintenance fees attached to them? 12 A. It was disclosed with maintenance 13 fees, yes. 14 Q. So when you say in 2005, this was 15 post holiday 2004 season? 16 A. Yes. 17 Q. Cards were introduced that had no 18 fees, whatsoever? 19 A. Right. 20 Q. No maintenance fee? 21 A. No maintenance fee. 22 Q. Okay. Can you address in any way the 23 change in that policy? 24 A. Other than the fact that it came from</p>	<p style="text-align: center;">Page 60</p> <p>1 had had maintenance fees attached to them and 2 those maintenance fees were suspended forever or 3 was there a batch of cards printed up where on the 4 back it said there is no maintenance fee? If you 5 know. 6 MR. HARVEY: Object to the form 7 of the question. 8 THE WITNESS: I'm sorry, you'll 9 have to... 10 BY MR. FODERA: 11 Q. Well, my understanding is you were 12 the guy who was responsible for the nuts and bolts 13 of printing, getting the cards printed and getting 14 the boxes and getting the disclosure; is that 15 right? 16 A. Getting them to the stores, right. 17 Q. Getting them to the stores. 18 A. Yes. 19 Q. And were you also responsible for any 20 changes, of course with directions from others, 21 that would go on to the card? 22 A. Just that we would supply -- I was 23 responsible to make sure that the store had the 24 new supply.</p>
<p style="text-align: center;">Page 59</p> <p>1 Vernon Hill. 2 Q. Okay. And how do you know it came 3 from Vernon Hill? 4 A. Linda Verba told me. 5 Q. Who is Linda Verba? 6 A. She's my current boss. 7 Q. Was she your current boss then? 8 A. No. 9 Q. What was her position then? 10 A. She was head of retail banking. 11 Q. What did she tell you? 12 A. That we were getting -- doing away 13 with the maintenance fee based on Vernon's 14 direction. 15 Q. Did you have an understanding of the 16 basis for Vernon's direction that in 2005 the 17 maintenance fee would be done away with? 18 A. No idea. 19 Q. Did you see any documentation, emails 20 or otherwise in regard to this or was it just 21 oral? 22 A. Yeah. No, I didn't see anything 23 formal. 24 Q. Was this a situation where the cards</p>	<p style="text-align: center;">Page 61</p> <p>1 Q. Okay. Who was responsible for what 2 would go on the back of the card or go on the 3 front of the card? 4 A. Product, marketing. 5 Q. Can you tell me if in 2005 on the 6 back of the card the portion that refers to a 7 maintenance fee, if that was contained on the back 8 of the card or not? 9 A. To my recollection, it was not. 10 Q. Okay. Were you ever involved in any 11 meetings with any personnel with regard to this 12 change in policy where there would be no 13 maintenance fees? 14 A. No. 15 Q. How often would you get changes from 16 product on what would be contained on the card, 17 itself? 18 A. I don't recall ever getting changes 19 from product what's on the card. 20 Q. Well, who's placing the order with 21 the company that's manufacturing the cards? 22 A. What year? 23 Q. All right. We'll go in 2005, or we 24 can go last year, whatever you're comfortable</p>

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<p>1 with, unless it's changed.</p> <p>2 MR. HARVEY: Just to clarify</p> <p>3 one thing that I think the witness can</p> <p>4 clarify is he only ran this in 2004, I</p> <p>5 believe.</p> <p>6 THE WITNESS: Till Dan came.</p> <p>7 MR. HARVEY: So he didn't have</p> <p>8 the same position in 2005.</p> <p>9 BY MR. FODERA:</p> <p>10 Q. Let me go into that. Okay? You ran</p> <p>11 the pilot program.</p> <p>12 A. Correct.</p> <p>13 Q. And then you ran the first year of</p> <p>14 the roll out of the new gift card program?</p> <p>15 A. From an execution standpoint, yes.</p> <p>16 Q. Which is making sure the cards got to</p> <p>17 the banks, making sure the boxes were there, the</p> <p>18 ribbons were there, all of that, is that what you</p> <p>19 mean?</p> <p>20 A. Yes.</p> <p>21 Q. You weren't involved in the policy of</p> <p>22 disclosure and what would be on a disclosure.</p> <p>23 A. No.</p> <p>24 Q. But you were aware at some points of</p>	<p>1 training. Dan didn't manage training.</p> <p>2 Q. Okay.</p> <p>3 A. So training would be involved.</p> <p>4 Q. Okay.</p> <p>5 A. There's other pieces of marketing</p> <p>6 that would be involved.</p> <p>7 Q. Okay.</p> <p>8 A. Like design team.</p> <p>9 Q. What about legal, anybody from legal</p> <p>10 on your team?</p> <p>11 A. Not on my team.</p> <p>12 Q. Anyone from legal involved in the</p> <p>13 overall responsibility of the gift card program</p> <p>14 that you recall?</p> <p>15 A. I didn't interact with legal.</p> <p>16 Q. Okay. Do you know if Dan Goldman</p> <p>17 interacted with legal on the gift card program?</p> <p>18 A. I don't know. I wasn't there when he</p> <p>19 interacted with legal.</p> <p>20 Q. But do you have an understanding one</p> <p>21 way or another?</p> <p>22 A. The standard would be to interact</p> <p>23 with legal, yes.</p> <p>24 Q. The standard? What standard?</p>
Page 63	Page 65
<p>1 what those disclosures -- at least what some of</p> <p>2 them were?</p> <p>3 A. Yes.</p> <p>4 Q. And then at the end of 2004, that</p> <p>5 Christmas season 2004, when there are still fees,</p> <p>6 at what point did you change positions?</p> <p>7 A. I don't remember the exact month, but</p> <p>8 it was definitely 2005.</p> <p>9 Q. Okay. Was it after the institution</p> <p>10 of the no fee --</p> <p>11 A. Yes.</p> <p>12 Q. -- policy?</p> <p>13 Okay. So at least during part</p> <p>14 of that, at least during the institution of the no</p> <p>15 fee policy, you were still running the gift card</p> <p>16 program.</p> <p>17 A. Yes. From an operational standpoint.</p> <p>18 Q. Correct. Can you tell me who else</p> <p>19 was running the gift card program from other than</p> <p>20 an operational standpoint?</p> <p>21 A. Dan Goldman.</p> <p>22 Q. So the two of you had 360 degrees of</p> <p>23 the gift card program between you?</p> <p>24 A. There was other people involved like</p>	<p>1 A. The bank standard when we launch</p> <p>2 anything.</p> <p>3 Q. So one of the two of you would have</p> <p>4 interacted with legal and it wasn't you?</p> <p>5 A. It wasn't me.</p> <p>6 Q. And it's either you or Dan, correct?</p> <p>7 I mean I just want to understand the players.</p> <p>8 A. From a product perspective?</p> <p>9 Q. Uh-huh.</p> <p>10 A. That would fall under a product</p> <p>11 design piece of responsibility, yes.</p> <p>12 Q. So you can infer that Dan would have</p> <p>13 interacted with legal because you didn't and you</p> <p>14 were the two product guys?</p> <p>15 A. I wasn't a product guy; I was the</p> <p>16 operations guy.</p> <p>17 Q. Okay.</p> <p>18 A. He was the product guy.</p> <p>19 Q. So the answer to my question is you</p> <p>20 believe Dan would have interacted with legal,</p> <p>21 correct?</p> <p>22 MR. HARVEY: I object to the</p> <p>23 form of the question.</p> <p>24 MR. FODERA: You can answer it.</p>

<p style="text-align: center;">Page 66</p> <p>1 THE WITNESS: I would assume</p> <p>2 Dan interacted with legal.</p> <p>3 MR. FODERA: Fair enough.</p> <p>4 Okay. Let's take five minutes.</p> <p>5 (Discussion held off the</p> <p>6 record.)</p> <p>7 (At this time, a lunch recess</p> <p>8 was taken.)</p> <p>9 BY MR. FODERA:</p> <p>10 Q. Mr. Grimmer, let me clean up a couple</p> <p>11 of details on what we've discussed so far. Going</p> <p>12 back to that pilot program that we were talking</p> <p>13 about earlier today, do you know if during the</p> <p>14 pilot program there were disclosures made with</p> <p>15 regard to the gift cards?</p> <p>16 A. I can't recall what they looked like,</p> <p>17 but yes, we always had to have disclosures.</p> <p>18 Q. During the pilot program, was there a</p> <p>19 trifold used like there is today?</p> <p>20 A. I can't recall exactly.</p> <p>21 Q. Was there a terms and conditions</p> <p>22 attached in some way to the gift card during the</p> <p>23 pilot program?</p> <p>24 A. Yes, every product that we institute</p>	<p style="text-align: center;">Page 68</p> <p>1 event called Red Friday celebrating our culture</p> <p>2 and our color, so we would have various events</p> <p>3 during the year, you know, some were for community</p> <p>4 events, stuff like that. So Dr. WOW is our</p> <p>5 internal communication guy. It's not a person;</p> <p>6 it's just a name. He would just send out a mass</p> <p>7 email to everyone advising that there was going to</p> <p>8 be a pilot gift card sales for the holiday season.</p> <p>9 Q. "To everyone," that would have been</p> <p>10 everyone in Marlton or in the Marlton area or --</p> <p>11 A. Mt. Laurel area.</p> <p>12 Q. In Mt. Laurel?</p> <p>13 A. Mt. Laurel.</p> <p>14 Q. Okay. And what was the Mt. Laurel</p> <p>15 area? I mean does it extend to Cinnaminson and</p> <p>16 down to Haddonfield --</p> <p>17 A. No.</p> <p>18 Q. -- or is it just Mt. Laurel?</p> <p>19 A. Mt. Laurel, in the campus.</p> <p>20 Q. What do you mean the campus?</p> <p>21 A. The Mt. Laurel campus is where most</p> <p>22 of the support functions for Commerce Bank sat.</p> <p>23 Q. Okay. And what was the address of</p> <p>24 that?</p>
<p style="text-align: center;">Page 67</p> <p>1 has to have a terms and conditions.</p> <p>2 Q. Are you saying yes because it's your</p> <p>3 understanding the practice and procedure is that</p> <p>4 every program or are you saying yes from actual</p> <p>5 knowledge of the terms and conditions attached to</p> <p>6 the card in the pilot program?</p> <p>7 A. I can't recall whether -- I'm doing</p> <p>8 yes from practice and policy.</p> <p>9 Q. Okay.</p> <p>10 A. I can't recall exactly what the</p> <p>11 layout of the terms and conditions for the pilot</p> <p>12 was.</p> <p>13 Q. Fair enough. How did the employees</p> <p>14 become aware -- you said there were two events.</p> <p>15 How did they become aware of these events? How</p> <p>16 did they become aware of the pilot program?</p> <p>17 A. Through our internal communication.</p> <p>18 Q. What does that mean?</p> <p>19 A. So we have -- any time we have an</p> <p>20 employee event, and when I -- let me clarify</p> <p>21 employee event. This would have been for the main</p> <p>22 campus, so it would be like in the Mt. Laurel</p> <p>23 area. We didn't do it in every store.</p> <p>24 So we would do a Friday WOW</p>	<p style="text-align: center;">Page 69</p> <p>1 A. There was a couple: 9000 Atrium Way.</p> <p>2 11000 Atrium Way. 17000 Horizon Way.</p> <p>3 Q. Where is that?</p> <p>4 A. Right off of 73.</p> <p>5 Q. And?</p> <p>6 A. Atrium.</p> <p>7 Q. Down by Greentree?</p> <p>8 A. Excuse me?</p> <p>9 Q. Down by Greentree?</p> <p>10 A. No. Further west. Closer west,</p> <p>11 closer to the City than that. Do you know where</p> <p>12 Church Road is or Springdale?</p> <p>13 Q. Sure. Right in there --</p> <p>14 A. In that vicinity.</p> <p>15 Q. I may have asked some questions with</p> <p>16 regard to this, but are you aware of any</p> <p>17 documents, whatsoever, that exist with regard to</p> <p>18 the pilot program?</p> <p>19 A. Can you clarify "documents?"</p> <p>20 Q. Any kind of documents with regard to</p> <p>21 the gift card pilot program, any correspondence,</p> <p>22 any communications, any documents, whatsoever, any</p> <p>23 sales figures, anything.</p> <p>24 A. I mean there could be emails about</p>

19 (Pages 70 to 73)

Page 70	Page 72
<p>1 it. Is that what you mean?</p> <p>2 Q. Anything.</p> <p>3 A. I don't have any formal reports on</p> <p>4 it, no.</p> <p>5 Q. We've covered that, I understand</p> <p>6 that, but now I've just opened it up to all sorts</p> <p>7 of documents, anything. Are you aware of anything</p> <p>8 existing?</p> <p>9 A. Yeah, I mean I have emails from back</p> <p>10 in 2003 relative to gift card.</p> <p>11 Q. Okay. And have you produced those</p> <p>12 emails to your attorney?</p> <p>13 A. Yes.</p> <p>14 Q. We talked about feedback to the</p> <p>15 executive management earlier with regard to the</p> <p>16 pilot program. Do you recall those questions?</p> <p>17 Can you tell me -- and I think you said that</p> <p>18 marketing might have created that feedback, it</p> <p>19 wasn't operations or it wasn't your end, but can</p> <p>20 you tell me who in executive management would have</p> <p>21 received that feedback?</p> <p>22 A. I can't give you specific names of</p> <p>23 who --</p> <p>24 Q. Can you give me positions?</p>	<p>1 retail operations and customer experience.</p> <p>2 Q. Okay. You were in charge of the</p> <p>3 program at its launch.</p> <p>4 A. Operational.</p> <p>5 Q. From an operations standpoint.</p> <p>6 A. Yes.</p> <p>7 Q. But did you have any input into the</p> <p>8 advertisements or announcements at the launch?</p> <p>9 A. No.</p> <p>10 Q. Let's talk a moment about Card Genie.</p> <p>11 You're familiar with that system?</p> <p>12 A. Yes.</p> <p>13 Q. Explain that system, briefly.</p> <p>14 A. It's a system that records the cards,</p> <p>15 both debit, gift card; at one point credit card,</p> <p>16 as well.</p> <p>17 Q. So it's not just for the gift card</p> <p>18 program?</p> <p>19 A. No.</p> <p>20 Q. All right. But within the Card Genie</p> <p>21 system would it be fair to say that you could pull</p> <p>22 out reports with regard to the gift card program</p> <p>23 only as opposed to debit cards or credit cards?</p> <p>24 A. I can't answer that question. That's</p>
Page 71	Page 73
<p>1 A. No.</p> <p>2 Q. When you were using the term</p> <p>3 executive management, what group of officers were</p> <p>4 you including in that?</p> <p>5 A. The retail bank executive team.</p> <p>6 Q. Which would be?</p> <p>7 A. Dennis DiFlorio.</p> <p>8 Q. Dennis DiFlorio. John...</p> <p>9 A. Cunningham.</p> <p>10 Q. -- Cunningham.</p> <p>11 And Vernon Hill? Not that</p> <p>12 high?</p> <p>13 A. That's pretty high.</p> <p>14 Q. Okay. Who else?</p> <p>15 A. Well, Kevin would have been part --</p> <p>16 Q. Kevin Barry.</p> <p>17 A. -- producing it. Possibly Linda</p> <p>18 Verba.</p> <p>19 Q. Okay.</p> <p>20 A. She's not on there, but...</p> <p>21 Q. You mentioned her before and you said</p> <p>22 that she's the one who told you, but I wanted to</p> <p>23 know what is her position now.</p> <p>24 A. She's in charge of operation --</p>	<p>1 a technology question.</p> <p>2 Q. Okay. The Card Genie program, when</p> <p>3 was it created?</p> <p>4 A. Best recollection?</p> <p>5 Q. Yes.</p> <p>6 A. September 2001.</p> <p>7 Q. So would the Card Genie program have</p> <p>8 been utilized to -- strike that question.</p> <p>9 Do you utilize the Card Genie</p> <p>10 program to create a gift card or authorize a</p> <p>11 gift card?</p> <p>12 A. It funds the gift card, loads the</p> <p>13 balance.</p> <p>14 Q. Loads it. That's the term I was</p> <p>15 looking for. And did it load -- did you use the</p> <p>16 Card Genie program during the pilot program for</p> <p>17 the gift card?</p> <p>18 A. Yes.</p> <p>19 Q. Did you use it during the roll out?</p> <p>20 A. Yes.</p> <p>21 Q. And does the Card Genie program have</p> <p>22 the ability to tell a person who looks in it how</p> <p>23 much is left on an individual card?</p> <p>24 A. No.</p>

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<p>1 Q. Other than loading the card, what 2 other function does it have, if you know? 3 A. I don't know. 4 Q. Back in 2004, one of your other 5 responsibilities had to do with ATM and debit 6 cards. 7 A. Yes. 8 Q. Do you recall that line of 9 questioning? 10 A. Yes. 11 Q. Were you involved in disclosures with 12 ATM and debit cards? 13 A. No. 14 Q. This was a very interesting video. 15 A. It's a little embarrassing. 16 Q. It was a very interesting video. 17 You're the man in black. 18 A. That's me. 19 Q. Like Johnny Car' -- Cash. 20 Who was the video meant for? 21 A. The retail store employees. 22 Q. So it's not something that was shown 23 on ABC? 24 A. No, it's internal. Thank god.</p>	<p>1 meetings? 2 A. Huddle, store huddles. 3 Q. Store huddles. 4 A. Uh-huh. 5 Q. And are store huddles training 6 sessions? 7 A. Yes. And meetings, combination. 8 Training as well as just staff meetings per se. 9 Q. Fair enough. So would it be fair to 10 say that this video is used or was used as a 11 training tool? 12 A. Yes. 13 Q. And where would this have been used 14 as a training tool? Just in Mt. Laurel or -- 15 A. No. 16 Q. -- Florida, New York? Where? 17 A. New York, Florida, wherever we had 18 branches. 19 Q. Would this have been shown in every 20 branch at one time or another? 21 A. Yes. 22 Q. Any question about that? 23 A. Am I questioning -- 24 Q. Any question about that? Are you</p>
Page 75	Page 77
<p>1 Q. Where would it be shown and -- 2 A. At a store team huddle meeting. 3 Q. And how often would they occur? 4 A. Team huddle meetings? 5 Q. Uh-huh. 6 A. Not standard but typically weekly. 7 Q. Would this be something -- do you 8 know when this video was made? Can you 9 approximate? 10 A. 2006. 11 Q. Okay. 12 A. Actually, August 2006 is when it was 13 produced. 14 Q. How do you know that? 15 A. Because when I went to get the video, 16 I asked them to go back in the archive and my 17 colleague said, "Oh, the one from August 2006." 18 Q. Okay. Any other videos like this 19 that you haven't gotten? 20 A. Not for gift card. 21 Q. Okay. This is the only gift card 22 in-house video? 23 A. That I recall, yes. 24 Q. That would have been used at hall</p>	<p>1 sure it would have been shown in every branch at 2 one time or another? 3 A. I wasn't there, so I can't confirm -- 4 Q. Yeah, I realize that. 5 A. That was the practice was to show the 6 video at every store. 7 Q. Okay. In the video, itself -- if you 8 want to put it on -- 9 A. No. 10 Q. -- I'd be happy to show it to you 11 again. 12 A. I'm somewhat familiar. 13 Q. But it seems to be broken down into a 14 couple things. One I'll refer to as the rah-rah 15 session. And then there's interaction, I don't 16 know if that's a real customer and a real bank 17 employee or if they're bank employees or they're 18 all actors, but it seems to be a mock sale. So 19 you got a rah-rah session and a mock sale. Then 20 you've got the happy recipient opening up his 21 gifts, his disappointing gifts and then seeing the 22 gift card. Those are the three sorts of segments. 23 Is that what you recall? 24 A. Yes.</p>

<p style="text-align: center;">Page 78</p> <p>1 Q. And that middle segment where you</p> <p>2 have the -- first of all, are they bank employees</p> <p>3 or are they actors, if you know?</p> <p>4 A. Combination.</p> <p>5 Q. What's the combination?</p> <p>6 A. Some are bank employees, some are</p> <p>7 actors.</p> <p>8 Q. No, I'm talking about specifically</p> <p>9 the middle section where you've got the bank</p> <p>10 employee showing and selling the card to the</p> <p>11 perspective customer.</p> <p>12 A. I don't know, I can't be one hundred</p> <p>13 percent sure whether or not they're actors or all</p> <p>14 bank employees. Some, I know, are bank employees.</p> <p>15 The recipient, I know --</p> <p>16 Q. Some of them really didn't look like</p> <p>17 actors --</p> <p>18 A. Right.</p> <p>19 Q. -- some of them did.</p> <p>20 A. Exactly. Two ladies to my -- either</p> <p>21 side are actors. I could tell you that.</p> <p>22 Q. Oh, really?</p> <p>23 A. Yes.</p> <p>24 Q. They weren't CSR from New York and</p>	<p style="text-align: center;">Page 80</p> <p>1 person who bought a card.</p> <p>2 Q. When you've given cards to people --</p> <p>3 do you then turn around and give them to people?</p> <p>4 A. Yes.</p> <p>5 Q. When you give them to the recipient,</p> <p>6 do you tell the recipient, your own personal</p> <p>7 practice, the issue date of the card?</p> <p>8 A. No.</p> <p>9 Q. Why not?</p> <p>10 A. Why do they need to know?</p> <p>11 Q. Because twelve months after the issue</p> <p>12 date of the card, fees start to accrue. Do you</p> <p>13 think that's information the recipient should</p> <p>14 know?</p> <p>15 A. Yes, but it's in the disclosure. I</p> <p>16 mean I don't sit there and tell them every -- "Hi,</p> <p>17 here's your gift, and by the way, you're going to</p> <p>18 get charged a fee."</p> <p>19 Q. How would they know when the card was</p> <p>20 issued unless they hear it from you?</p> <p>21 A. There's all the information relative</p> <p>22 to where to contact people, like for the</p> <p>23 recipients. So I would tell them, You should go</p> <p>24 on line --</p>
<p style="text-align: center;">Page 79</p> <p>1 Florida?</p> <p>2 A. No. They played that part, but they</p> <p>3 were actors.</p> <p>4 Q. I just assumed that they weren't. I</p> <p>5 was completely wrong.</p> <p>6 The middle part, the whole</p> <p>7 sales segment, was that sort of meant to be a</p> <p>8 training in how to sell the product, or at least</p> <p>9 in part?</p> <p>10 A. In part, yes.</p> <p>11 Q. Was that an exemplar of the types of</p> <p>12 things that the branch person selling the card</p> <p>13 should say to the purchaser of the card, things</p> <p>14 they should go over?</p> <p>15 A. I don't recall a hundred percent.</p> <p>16 Yeah, in general it's showing them how to sell the</p> <p>17 card.</p> <p>18 Q. Sure. Do you ever sell -- do you</p> <p>19 ever buy cards to give as gifts?</p> <p>20 A. All the time.</p> <p>21 Q. Have you?</p> <p>22 A. Yes.</p> <p>23 Q. Since this has been instituted?</p> <p>24 A. I think I probably was the first</p>	<p style="text-align: center;">Page 81</p> <p>1 Q. Right.</p> <p>2 A. -- register your card --</p> <p>3 Q. Okay.</p> <p>4 A. -- which would provide the issue</p> <p>5 date, you can call into this phone number as well</p> <p>6 as a live customer service person relative to your</p> <p>7 card.</p> <p>8 Q. Would it be fair to say that in none</p> <p>9 of the training materials or videos since the</p> <p>10 inception of the program through Commerce and</p> <p>11 through today were store salespeople who were</p> <p>12 selling the cards ever advised to tell the</p> <p>13 purchaser to tell the recipient what the issue</p> <p>14 date was? Is that a fair statement?</p> <p>15 A. Yes.</p> <p>16 Q. So right after this roll out of the</p> <p>17 program, you become the director of store</p> <p>18 operations?</p> <p>19 A. Correct.</p> <p>20 Q. First of all, is that a promotion?</p> <p>21 A. Yes.</p> <p>22 Q. And what was her name, Linda Verba</p> <p>23 had been the director of store operations?</p> <p>24 A. No, she was the head of retail</p>

Page 82	Page 84
<p>1 banking and still was when I became the director 2 of store operations. 3 Q. Oh, okay. So in the prior position 4 were you reporting to Linda? 5 A. No. 6 Q. But in the new position you were 7 reporting to Linda? 8 A. Correct. 9 Q. And you reported to her continuously 10 since then? 11 A. Correct. 12 Q. She didn't leave after the 13 transition? 14 A. No, she did not. 15 Q. So what were your responsibilities as 16 the director of store operations -- well, let me 17 ask it this way: Since 2005, since you took that 18 position, have your responsibilities changed? 19 A. The only way they've changed is with 20 the integration, it expanded into the former 21 legacy Banknorth footprint. 22 Q. So you're in charge of -- 23 A. Same job with more locations. 24 Q. -- more banks?</p>	<p>1 Q. Is there a step in between those two, 2 branch manager and regional manager? 3 A. There's actually two regional 4 managers. 5 Q. Okay. 6 A. So no, there's no step in between, 7 but there's two regional managers. 8 Q. Okay, that's fine. There's two 9 regions. 10 A. Yeah -- no. 11 Q. No? 12 A. Two regional managers. 13 Q. All right. 14 A. One's sales and one's operations. 15 Q. Okay. All right. And customer 16 service representatives report to which regional 17 manager? 18 A. Customer service representatives 19 report to the store manager. 20 Q. Okay. 21 A. Which is branch when you say store. 22 Q. Store manager/branch manager. 23 A. Right. 24 Q. I grew up in a different era.</p>
Page 83	Page 85
<p>1 A. Right. 2 Q. Okay. But what does the director of 3 store operations -- what do you do? 4 A. So I overall run the stores from a 5 staffing service delivery perspective. 6 Q. Okay. What does that mean? 7 A. So the model of the staff, in other 8 words, how many tellers you need, how many CSRs 9 you need, your hours of operation, what computer 10 equipment you need to have in your store, 11 supplies. I have a group of regional operational 12 officers that work for me that have clusters of 13 stores. So I do more the strategic pieces of the 14 banking and the operations of the banking, and 15 then -- 16 Q. So in each branch -- I'm cutting you 17 off here because I just want to be clear here. In 18 each branch you have a combination of tellers and 19 customer service representatives, and then there's 20 a branch manager. 21 A. Correct. 22 Q. And then there's groups of branches 23 that have a regional manager? 24 A. Yes.</p>	<p>1 A. Right. 2 Q. And then the regional managers report 3 to you? 4 A. The operational regional managers do 5 report to me, but not directly. There's a senior, 6 which is a market, regional manager. 7 Q. Okay. 8 A. So there's twelve that report to me. 9 Q. So under Commerce how many regional 10 managers did you have and then -- 11 A. Seven. 12 Q. -- under TD how many do you have? 13 A. I'm sorry. Eight under Commerce, 14 twelve under, combined. 15 Q. And branches, how many branches under 16 Commerce, how many branches under TD? 17 A. Commerce, approximately five hundred. 18 TD combined with Commerce 1,039. 19 Q. And you're the director of operations 20 from Florida to Maine? 21 A. Yes, I am. 22 Q. Do you get to go to Florida and 23 Maine? 24 A. Yes, I do.</p>

<p style="text-align: center;">Page 86</p> <p>1 Q. How much of your time is spent on the</p> <p>2 road?</p> <p>3 A. 50 percent.</p> <p>4 Q. What do you do on the road?</p> <p>5 A. Meet with regional operations</p> <p>6 officers, visit stores, meet with facilities, real</p> <p>7 estate.</p> <p>8 Q. Do you have any, inartfully termed</p> <p>9 but I'm going to term it as secret shopper</p> <p>10 programs?</p> <p>11 A. We have WOW shoppers, mystery</p> <p>12 shoppers.</p> <p>13 Q. Okay. Mystery shoppers, very good.</p> <p>14 WOW shoppers.</p> <p>15 A. Yes.</p> <p>16 Q. And do you have WOW shoppers that go</p> <p>17 into stores for gift cards?</p> <p>18 A. Yeah, they would.</p> <p>19 Q. And in the WOW shopper or mystery</p> <p>20 shopper program do they have to generate reports</p> <p>21 with regard to their findings when they go into a</p> <p>22 branch?</p> <p>23 A. Yes.</p> <p>24 Q. And would it be fair to say that</p>	<p style="text-align: center;">Page 88</p> <p>1 your mystery shoppers at the bank found with</p> <p>2 regard to gift card program, could I get that</p> <p>3 information?</p> <p>4 A. I don't know if you can get it down</p> <p>5 to specific product. You can get it down to</p> <p>6 teller, CSR, Penny Arcade, phone.</p> <p>7 Q. You lost me there. Penny Arcade and</p> <p>8 phone?</p> <p>9 A. Yeah. So you want them, too?</p> <p>10 Q. Well, go from the beginning.</p> <p>11 A. Teller, so that would be a teller</p> <p>12 experience.</p> <p>13 Q. Right.</p> <p>14 A. CSR, that would be a platform</p> <p>15 experience.</p> <p>16 Q. CSR is customer service</p> <p>17 representative?</p> <p>18 A. Right.</p> <p>19 Penny Arcade would be the coin</p> <p>20 counting experience. Telephone would be that they</p> <p>21 called into the store and asked a question.</p> <p>22 Q. Okay. But in the TD Banks, and we're</p> <p>23 talking about TD now, maybe it is different in</p> <p>24 Commerce, you tell me, am I correct that only the</p>
<p style="text-align: center;">Page 87</p> <p>1 their entire time in the branch they are not to</p> <p>2 tell anybody their true identity?</p> <p>3 A. True.</p> <p>4 Q. And they walk out and they write up</p> <p>5 their findings?</p> <p>6 A. Correct.</p> <p>7 Q. And they submit them to who?</p> <p>8 A. The WOW department.</p> <p>9 Q. And where is the WOW department</p> <p>10 relative to you?</p> <p>11 A. It's a different vertical under Linda</p> <p>12 Verba.</p> <p>13 Q. So do you get comments from the</p> <p>14 mystery shoppers from the WOW department or from</p> <p>15 Linda Verba?</p> <p>16 A. I get the scoring. I don't get the</p> <p>17 individual comments.</p> <p>18 Q. Okay. What do you mean the scoring,</p> <p>19 what does that mean?</p> <p>20 A. So it's broken down into segments, so</p> <p>21 it's the greeting, the process of the transaction,</p> <p>22 the closing, the overall experience, scoring.</p> <p>23 Q. Do you get them with regard to</p> <p>24 specific transactions or if I wanted to know what</p>	<p style="text-align: center;">Page 89</p> <p>1 CSRs sold gift cards?</p> <p>2 A. In Commerce Bank, you are correct.</p> <p>3 Q. And TD Bank, that's not correct?</p> <p>4 A. It's available at teller, as well.</p> <p>5 Q. When a purchaser comes into TD Bank,</p> <p>6 or Commerce Bank before it, to purchase a</p> <p>7 gift card, as part of the information, the oral</p> <p>8 information that is given to them in the sales</p> <p>9 pitch, for lack of a better term -- do you</p> <p>10 understand? Do you have an understanding what I</p> <p>11 mean when I say sales pitch?</p> <p>12 A. What they talk about the product?</p> <p>13 Q. Yes.</p> <p>14 A. Uh-huh.</p> <p>15 Q. We'll use that as the definition of</p> <p>16 sales pitch.</p> <p>17 -- would you agree with me</p> <p>18 that in the sales pitch for the gift card, the</p> <p>19 bank's representative never tells the purchaser</p> <p>20 that after a certain amount of time there will be</p> <p>21 a \$2.50 per month charge on the card?</p> <p>22 MR. HARVEY: Object to the form</p> <p>23 of the question.</p> <p>24 MR. FODERA: You can answer it.</p>

<p style="text-align: center;">Page 90</p> <p>1 THE WITNESS: I'm sorry, repeat</p> <p>2 the question.</p> <p>3 BY MR. FODERA:</p> <p>4 Q. I just want to be clear, that in the</p> <p>5 formal training and in all of the training</p> <p>6 materials, if a TD or Commerce Bank employee is</p> <p>7 following all of the right steps, when they're</p> <p>8 selling a card to a depositor, nowhere in their</p> <p>9 sales pitch are they telling the depositor that</p> <p>10 after X amount of months there will be a \$2.50</p> <p>11 per month charge on the card; is that correct?</p> <p>12 A. No.</p> <p>13 Q. At what point and what materials can</p> <p>14 you point to where they're told to tell the</p> <p>15 purchaser that there is a \$2.50 per month charge</p> <p>16 after X amount of months?</p> <p>17 A. In all our documentation, even our</p> <p>18 training or online procedure manual it tells you</p> <p>19 that you have a \$2.50 fee, the WAG, WOW Answer</p> <p>20 Guide.</p> <p>21 Q. The WOW Answer Guide tells the person</p> <p>22 who's selling the card to tell the purchaser that</p> <p>23 there is a \$2.50 per month fee after a certain</p> <p>24 amount of time?</p>	<p style="text-align: center;">Page 92</p> <p>1 A. I should, yeah.</p> <p>2 Q. So the answer to the question is --</p> <p>3 isn't the answer no, they're not directed to tell</p> <p>4 the person that there's a \$2.50 per month fee</p> <p>5 after a certain amount of time?</p> <p>6 A. Specific in those terms --</p> <p>7 Q. Uh-huh.</p> <p>8 A. -- I can't recall whether or not</p> <p>9 specifically they were told to say there's a \$2.50</p> <p>10 fee.</p> <p>11 Q. Is there any -- because I haven't</p> <p>12 seen -- I've looked through all of the materials,</p> <p>13 and you in preparation for this told me you looked</p> <p>14 through some sales materials.</p> <p>15 A. Uh-huh.</p> <p>16 Q. Have you seen any sales materials at</p> <p>17 all from TD or Commerce Bank for the bank</p> <p>18 employees where they are told to tell the</p> <p>19 purchaser that there is a \$2.50 per month fee</p> <p>20 after a certain amount of time?</p> <p>21 A. The only place that would have told</p> <p>22 them is in a Q and A environment which is standard</p> <p>23 in training which would have said: "Is there a</p> <p>24 fee associated with this card?" "There is a two</p>
<p style="text-align: center;">Page 91</p> <p>1 A. It doesn't specifically say tell the</p> <p>2 customer this.</p> <p>3 Q. That's what I'm asking.</p> <p>4 A. I'm sorry.</p> <p>5 Q. That's where I'm at right now.</p> <p>6 There's no dispute that your materials, some of</p> <p>7 your materials disclose that. That's not in</p> <p>8 dispute. What I'm talking about now is the retail</p> <p>9 experience, the customers going into the store,</p> <p>10 they've got -- at times would you agree with me</p> <p>11 you have signs outside the store that say, free</p> <p>12 gift card, things of that nature? Is that fair?</p> <p>13 A. That's true.</p> <p>14 Q. And a person comes in and says, "I'd</p> <p>15 like to get a gift card."</p> <p>16 A. Right.</p> <p>17 Q. At no time during that transaction is</p> <p>18 the bank employee directed to tell the purchaser,</p> <p>19 to tell the purchaser that a \$2.50 per month</p> <p>20 charge can begin accruing after a certain amount</p> <p>21 of months; is that correct?</p> <p>22 A. Not that I can recall.</p> <p>23 Q. Well, you would be the person who</p> <p>24 would know that information; isn't that right?</p>	<p style="text-align: center;">Page 93</p> <p>1 fifty -- \$250 maintenance -- I'm sorry, \$2.50</p> <p>2 maintenance fee that applies after -- I think on</p> <p>3 the first day after the twelfth month of the card</p> <p>4 I think is how it's stated.</p> <p>5 Q. Okay. So if there is such a thing,</p> <p>6 it may appear in a Q and A sheet?</p> <p>7 A. Right.</p> <p>8 Q. And when you talk about a sheet --</p> <p>9 A. Q and A training document.</p> <p>10 Q. I'm sorry. Q and A training</p> <p>11 document.</p> <p>12 A. Yes.</p> <p>13 Q. Okay. As the director of store</p> <p>14 operations in 2005 and subsequently, are you</p> <p>15 responsible for the ongoing gift card program?</p> <p>16 A. No.</p> <p>17 Q. When you changed positions in the</p> <p>18 beginning of 2005, who then became responsible for</p> <p>19 the overall gift card program on the operational</p> <p>20 side?</p> <p>21 A. I don't know.</p> <p>22 Q. You don't know?</p> <p>23 A. No.</p> <p>24 Q. Who's responsible for it now?</p>

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<p>1 A. Deb Calulo.</p> <p>2 Q. Can you spell that?</p> <p>3 A. No.</p> <p>4 Q. With a C or a K?</p> <p>5 A. I have no idea. She's from former</p> <p>6 Banknorth. I just don't know how to spell her</p> <p>7 name.</p> <p>8 Q. And how long has she had that job --</p> <p>9 A. I have no idea.</p> <p>10 Q. -- can you approximate for me?</p> <p>11 A. No.</p> <p>12 Q. Has there been anybody with that job</p> <p>13 between you and her?</p> <p>14 A. Yes.</p> <p>15 Q. Has there been more than one person</p> <p>16 with that job between you and her?</p> <p>17 A. I don't know for sure.</p> <p>18 Q. Can you estimate for me the number of</p> <p>19 people who have had that job between you and her?</p> <p>20 A. No.</p> <p>21 Q. And you said that there were two, I</p> <p>22 think Goldman was the other --</p> <p>23 A. Dan Goldman.</p> <p>24 Q. -- Dan Goldman was the other side of</p>	<p>1 of products for the retail bank.</p> <p>2 Q. Did you ever work with Matt Chevalier</p> <p>3 with regard to the gift card program?</p> <p>4 A. Conversations during the integration</p> <p>5 process, just two different platforms, what are we</p> <p>6 going to, but not -- not in the operational</p> <p>7 standpoint like I was back in 2004.</p> <p>8 Q. Was he a TD person or a Commerce</p> <p>9 person?</p> <p>10 A. TD person.</p> <p>11 Q. Was he with TD before the merger?</p> <p>12 A. Yes.</p> <p>13 Q. You said earlier on that you were</p> <p>14 responsible for ordering cards -- the cards,</p> <p>15 themselves, and the operational standpoint. Did</p> <p>16 you have any responsibility with regard to daily</p> <p>17 sales figures?</p> <p>18 A. Reporting daily sales figures?</p> <p>19 Q. Yes.</p> <p>20 A. I would get daily sales figures, yes.</p> <p>21 Q. Was that in your last position or do</p> <p>22 you get those figures also as director of --</p> <p>23 A. I still get them.</p> <p>24 Q. And how -- obviously you get them</p>
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<p>1 the gift card?</p> <p>2 A. Yes.</p> <p>3 Q. Does Dan Goldman still have that</p> <p>4 position?</p> <p>5 A. No.</p> <p>6 Q. Who has that position now?</p> <p>7 A. Suneal, it begins with a K. I don't</p> <p>8 know his last name.</p> <p>9 Q. Before Suneal K. and after Goldman,</p> <p>10 who had that position?</p> <p>11 A. Matt Chevalier.</p> <p>12 Q. Okay. And before Matt Chevalier and</p> <p>13 after Goldman, did anyone have that position?</p> <p>14 A. No, actually -- no.</p> <p>15 Q. What does Matt Chevalier do at the</p> <p>16 bank now?</p> <p>17 A. Right now?</p> <p>18 Q. Uh-huh.</p> <p>19 A. Within the last week he's now in</p> <p>20 charge of sales.</p> <p>21 Q. What does that mean?</p> <p>22 A. Retail sales. He's a retail sales</p> <p>23 manager. He designs campaigns and product --</p> <p>24 doesn't design product, excuse me, the sales piece</p>	<p>1 daily.</p> <p>2 A. Well, let me clarify. We don't</p> <p>3 typically get them daily during the down period of</p> <p>4 gift card; it's usually holiday season. So the</p> <p>5 last one I got was December 2009. Are we 2010?</p> <p>6 Yeah.</p> <p>7 Q. Is there more than one holiday</p> <p>8 season?</p> <p>9 A. That's a...</p> <p>10 Q. I mean Christmas, the November to</p> <p>11 January is -- would you agree that the majority of</p> <p>12 your cards are sold in that season?</p> <p>13 A. Absolutely.</p> <p>14 Q. And then are there any other peaks?</p> <p>15 A. Yes.</p> <p>16 Q. When are those?</p> <p>17 A. Grads and dads.</p> <p>18 Q. Grads and dads. So June, May?</p> <p>19 A. May, June.</p> <p>20 Q. Okay. Any other peaks?</p> <p>21 A. That's the only ones I can recall.</p> <p>22 Q. Now, I've seen materials, and maybe</p> <p>23 we'll get to them and maybe we won't, with regard</p> <p>24 to percentage increases in sales. "We want to, we</p>

26 (Pages 98 to 101)

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<p>1 at TD or we at Commerce want to increase our</p> <p>2 percentages by 200 percent over last year or</p> <p>3 300 percent," and I'm just picking those numbers</p> <p>4 at random. But can you put a little flesh on</p> <p>5 those bones with regard to the percentage increase</p> <p>6 over year one to year two, year two to year three</p> <p>7 in gift card sales? Like year one you had your</p> <p>8 pilot program in 2004 and then you rolled it</p> <p>9 out --</p> <p>10 A. No, we had the pilot program in 2003.</p> <p>11 Q. 2003. You rolled it out in 2004.</p> <p>12 A. 2004.</p> <p>13 Q. So use 2005. Did your sales go</p> <p>14 100 percent over 2004 or 500 percent over, as best</p> <p>15 you can?</p> <p>16 A. I don't know the exact percentage,</p> <p>17 but they were higher the year -- second year.</p> <p>18 Q. Would it be fair to say every year</p> <p>19 has seen an increase in gift card sales?</p> <p>20 A. No.</p> <p>21 Q. What years have not seen an increase?</p> <p>22 A. I don't think last year was an</p> <p>23 increase to the prior year.</p> <p>24 Q. Up until Christmas season of 2009,</p>	<p>1 A. No. I don't know the P and L from</p> <p>2 gift card.</p> <p>3 Q. Okay. What about with regard to</p> <p>4 maintenance or other fees that are accruing to the</p> <p>5 bank because the card has gone more than six</p> <p>6 months or twelve months?</p> <p>7 A. I don't understand the question.</p> <p>8 Q. Well, after -- except for the year</p> <p>9 2005, we agree that after twelve months from the</p> <p>10 date of purchase of the card, a \$2.50 per month</p> <p>11 fee begins to accrue and is taken off the card.</p> <p>12 We agree with that, right? There's no dispute</p> <p>13 there.</p> <p>14 A. Yes. That would be legacy Commerce,</p> <p>15 yes.</p> <p>16 Q. I don't understand what you mean.</p> <p>17 A. I can speak to legacy Commerce card,</p> <p>18 gift card.</p> <p>19 Q. Okay.</p> <p>20 A. Not as much TD Banknorth gift card.</p> <p>21 Q. Do you have an understanding as the</p> <p>22 director of store operations that after twelve</p> <p>23 months after the sale of a TD North gift card,</p> <p>24 \$2.50 per month comes off that card?</p>
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<p>1 had each year been an increase over the prior</p> <p>2 year?</p> <p>3 A. I'm not a hundred percent sure.</p> <p>4 Q. Who would have that information, the</p> <p>5 sales information for gift cards?</p> <p>6 A. Product.</p> <p>7 Q. Who in product would have that</p> <p>8 information?</p> <p>9 A. I'm guessing.</p> <p>10 Q. Well, I don't want you to guess, but</p> <p>11 if you have an understanding of which position</p> <p>12 would most likely be responsible for getting that</p> <p>13 information, I want to know who that is.</p> <p>14 A. The product manager for gift card.</p> <p>15 Q. And who is the product manager for</p> <p>16 gift card now?</p> <p>17 A. Suneal, I don't know his last name.</p> <p>18 Q. And what about with regard to fees</p> <p>19 assessed against cards, are you and have you at</p> <p>20 any time been involved with knowing what fees are</p> <p>21 assessed with regards to the gift cards? And I</p> <p>22 don't mean \$2.50 after twelve months; I mean with</p> <p>23 regard to fees generated to the bank from</p> <p>24 gift cards.</p>	<p>1 A. Well, there is no more TD Banknorth,</p> <p>2 so, no, I don't have --</p> <p>3 Q. Well, TD Bank. This card here.</p> <p>4 A. TD Bank, yes.</p> <p>5 Q. This card here.</p> <p>6 A. The current card.</p> <p>7 Q. This current card.</p> <p>8 A. Yes.</p> <p>9 Q. Right. That somebody gave me for</p> <p>10 Christmas.</p> <p>11 A. Lovely.</p> <p>12 Q. Okay? That if I don't use this in</p> <p>13 twelve months, the thirteenth month, your</p> <p>14 understanding is \$2.50 a month is going to come</p> <p>15 off this card until there is no more value on the</p> <p>16 card.</p> <p>17 A. Or you use it.</p> <p>18 Q. Or I use it.</p> <p>19 A. Uh-huh.</p> <p>20 Q. Right. Okay? So can you tell me who</p> <p>21 would be responsible for knowing how much in fees</p> <p>22 have been generated from that?</p> <p>23 A. The product manager.</p> <p>24 Q. Suneal?</p>

<p style="text-align: center;">Page 102</p> <p>1 A. Currently.</p> <p>2 Q. Can you tell me if the bank keeps</p> <p>3 records with regards to -- historical records with</p> <p>4 regard to the fees they've earned in that area?</p> <p>5 A. I can't answer that question.</p> <p>6 Q. Is that something you would expect</p> <p>7 the bank to be keeping historical information on,</p> <p>8 how much money they got from a particular area of</p> <p>9 operations?</p> <p>10 A. Yes.</p> <p>11 Q. I might have asked this question ten</p> <p>12 minutes ago, but I'm not certain. Do you have any</p> <p>13 responsibilities at all with regard to the</p> <p>14 gift card program as the vice president of store</p> <p>15 operations?</p> <p>16 A. Clarify what you mean</p> <p>17 "responsibilities."</p> <p>18 Q. I asked it wide open because I want</p> <p>19 to know if there's anything that you have to do</p> <p>20 with that program since 2005.</p> <p>21 A. I have knowledge of the program. My</p> <p>22 stores sell the cards.</p> <p>23 Q. Fair.</p> <p>24 A. So yes.</p>	<p style="text-align: center;">Page 104</p> <p>1 don't know the year.</p> <p>2 Q. Well, you said it was right after you</p> <p>3 got your teeth done, so when did you get your</p> <p>4 teeth done?</p> <p>5 A. I can't tell you that either.</p> <p>6 Q. Okay.</p> <p>7 A. A couple years ago.</p> <p>8 Q. Like '08?</p> <p>9 A. I think before that. '07? I don't</p> <p>10 know.</p> <p>11 Q. I'm trying to put -- I'm trying to</p> <p>12 figure out --</p> <p>13 A. Yeah, I don't know exactly when I</p> <p>14 became senior, but it was the same job just with a</p> <p>15 different corporate title.</p> <p>16 Q. Okay.</p> <p>17 MR. HARVEY: He told you the</p> <p>18 date of that video.</p> <p>19 THE WITNESS: August 2006, that</p> <p>20 was. Whether or not I was in the job of</p> <p>21 director of store operations, whether I was</p> <p>22 a vice president or senior vice president,</p> <p>23 that's questionable.</p> <p>24 BY MR. FODERA:</p>
<p style="text-align: center;">Page 103</p> <p>1 Q. And other than your general knowledge</p> <p>2 of the program, do you have specific knowledge,</p> <p>3 are you involved in the day-to-day aspects of</p> <p>4 the --</p> <p>5 A. No.</p> <p>6 Q. -- program at all?</p> <p>7 A. No.</p> <p>8 Q. And other than knowing that your</p> <p>9 stores sell the program and that periodically</p> <p>10 there are sales efforts to educate your employees,</p> <p>11 other than that aspect, are you involved in any</p> <p>12 other aspect of the gift card program?</p> <p>13 A. No.</p> <p>14 Q. When I saw your smiling face on the</p> <p>15 TV, were you the vice president of store</p> <p>16 operations?</p> <p>17 A. Yes. I was the senior vice president</p> <p>18 of store operations, I believe.</p> <p>19 Q. Is there some form of junior</p> <p>20 vice president --</p> <p>21 A. I was vice president at one point.</p> <p>22 Q. Okay.</p> <p>23 A. I got promoted to senior</p> <p>24 vice president. I don't know if it was then. I</p>	<p style="text-align: center;">Page 105</p> <p>1 Q. Okay. Do you have any oversight</p> <p>2 responsibilities with regard to the gift card</p> <p>3 program?</p> <p>4 A. Not today.</p> <p>5 Q. Have you had any since you became the</p> <p>6 director of store operations?</p> <p>7 A. I would say no.</p> <p>8 Q. Okay.</p> <p>9 A. Not in that capacity I was pre this</p> <p>10 job. I wasn't running the daily operations of</p> <p>11 gift card --</p> <p>12 Q. All right.</p> <p>13 A. -- after that time.</p> <p>14 Q. Right around the time that you moved</p> <p>15 into vice president of store operations was when</p> <p>16 Vernon Hill decided to cut out the fees --</p> <p>17 A. Correct.</p> <p>18 Q. -- for that year period.</p> <p>19 Do you have any information</p> <p>20 with regard to that at all except that it came</p> <p>21 from on high I think is what you said earlier?</p> <p>22 A. It came from Vernon.</p> <p>23 Q. Do you have any other information?</p> <p>24 A. No, I don't.</p>

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<p>1 Q. Do you have any understanding as to</p> <p>2 why he made this determination?</p> <p>3 A. No.</p> <p>4 Q. Do you have any understanding if he</p> <p>5 was advised to make this determination?</p> <p>6 A. No.</p> <p>7 Q. Do you have any understanding that</p> <p>8 the competition was doing this?</p> <p>9 A. No.</p> <p>10 Q. Okay. At some point in time, fees</p> <p>11 were reinstituted.</p> <p>12 A. Yes.</p> <p>13 Q. Do you have any understanding as to</p> <p>14 why fees were reinstituted?</p> <p>15 A. Speculating?</p> <p>16 Q. Well, no, I don't want speculation,</p> <p>17 but I'm entitled to your best understanding.</p> <p>18 A. Best understanding was that it was a</p> <p>19 standard practice in the industry to charge a</p> <p>20 maintenance fee for gift cards. If you don't</p> <p>21 charge a maintenance fee, the cards just sit there</p> <p>22 with these balances forever. That would be my</p> <p>23 best recollection.</p> <p>24 Q. Did you have any input into the \$2.50</p>	<p>1 MR. HARVEY: Let me just begin</p> <p>2 by saying I don't believe there was</p> <p>3 anything more that we have other than this</p> <p>4 email and that nothing was withheld on</p> <p>5 that. If you send me the email letter you</p> <p>6 promised to, I will take that as my</p> <p>7 reminder to double check, but I believe</p> <p>8 that to be the case.</p> <p>9 BY MR. FODERA:</p> <p>10 Q. You have in front of you Grimmer-3.</p> <p>11 A. Yes. 2.</p> <p>12 Q. 2, I mean. Sorry. First of all, can</p> <p>13 you identify what that is?</p> <p>14 A. It's an email.</p> <p>15 Q. Is that an email that at least on</p> <p>16 this page in front of us begins with an email from</p> <p>17 Kevin Barry?</p> <p>18 A. No, it begins with an email from</p> <p>19 Dennis DiFlorio.</p> <p>20 Q. It begins with an email from Dennis</p> <p>21 DiFlorio. Okay. To Kevin Barry.</p> <p>22 A. Correct.</p> <p>23 Q. And it says, "Okay to go with the</p> <p>24 2.50 fee."</p>
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<p>1 number?</p> <p>2 A. No.</p> <p>3 MR. FODERA: I don't know where</p> <p>4 that email is, Mike. Can you pull that</p> <p>5 out?</p> <p>6 MR. LALLI: Sure.</p> <p>7 MR. FODERA: Let's mark this as</p> <p>8 Grimmer Exhibit-2.</p> <p>9 (Document received and marked</p> <p>10 for identification Plaintiffs' Exhibit</p> <p>11 Grimmer-2, Document Bates-stamped number</p> <p>12 TD001391, consisting of 1 page.)</p> <p>13 MR. FODERA: Let me put an</p> <p>14 objection on the record and a clarification</p> <p>15 on the record. And what's produced to us</p> <p>16 TD001391 appears to be the end of an email</p> <p>17 string with regard to a \$2.50 fee. I'm</p> <p>18 going to send a follow-up to counsel that</p> <p>19 he produce the entire mail string for this</p> <p>20 email, and if it contains additional emails</p> <p>21 from Mr. Grimmer in this string, I'm going</p> <p>22 to reserve the right to recall him or at</p> <p>23 least ask him in some form with regard to</p> <p>24 what would be contained in this email.</p>	<p>1 A. Correct.</p> <p>2 Q. And this is in October of 2005. In</p> <p>3 October 2005, had you moved to director of --</p> <p>4 A. Store operations.</p> <p>5 Q. -- store operations?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And this is an email to Kevin</p> <p>8 Barry. And Kevin Barry the -- was who again?</p> <p>9 A. Product manager in marketing.</p> <p>10 Q. All right. And you're copied on this</p> <p>11 particular email along with Dan Goldman, who've</p> <p>12 you've identified. The second person, Lise...</p> <p>13 A. Moncilovich.</p> <p>14 Q. -- Moncilovich, you haven't</p> <p>15 identified. Who is she?</p> <p>16 A. She works in marketing. I don't have</p> <p>17 her title. Works in marketing.</p> <p>18 Q. Is she at an officer level in</p> <p>19 marketing?</p> <p>20 A. I believe so.</p> <p>21 Q. Is she still with TD?</p> <p>22 A. She is.</p> <p>23 Q. Chas Hermann, who is that?</p> <p>24 A. Marketing, as well. He ran our field</p>

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<p>1 marketing program.</p> <p>2 Q. What is a field marketing program?</p> <p>3 A. Marketing reps out into the various</p> <p>4 markets that we serve.</p> <p>5 Q. What do marketing reps do?</p> <p>6 A. They run local marketing campaigns</p> <p>7 for the retail network, grand openings, stuff like</p> <p>8 that.</p> <p>9 Q. And you're cc'd on this.</p> <p>10 A. Correct.</p> <p>11 Q. The only thing that we see here is</p> <p>12 the Dennis DiFlorio to Kevin Barry, "Okay to go</p> <p>13 with the 2.50 fee," and that's sent from</p> <p>14 apparently Dennis DiFlorio's BlackBerry wireless.</p> <p>15 Can you shed any light on this email?</p> <p>16 A. Other than I'm on it, no.</p> <p>17 Q. Does this email refer to the \$2.50</p> <p>18 maintenance fee?</p> <p>19 A. It doesn't say that.</p> <p>20 Q. I know that. That's why I'm asking</p> <p>21 you.</p> <p>22 A. I don't know what other fee it could</p> <p>23 be.</p> <p>24 Q. Well, that's my follow-up question.</p>	<p>1 Q. So this email seems to -- at least</p> <p>2 you're cc'd on this email with, "Okay to go with</p> <p>3 the \$2.50 fee," correct?</p> <p>4 A. Correct.</p> <p>5 Q. So does this -- did you review this</p> <p>6 email in preparing for this deposition?</p> <p>7 A. I've seen this email, yes.</p> <p>8 Q. Did you review this email in</p> <p>9 preparing for this deposition?</p> <p>10 A. Yes.</p> <p>11 Q. I mean you've obviously seen it</p> <p>12 because you saw it in 2005.</p> <p>13 A. Yes. Oh, no. Yes, I've seen it</p> <p>14 recently.</p> <p>15 Q. Okay. So can you tell me now having</p> <p>16 seen this does this refresh your recollection in</p> <p>17 any way with regard to whether or not you were</p> <p>18 involved in additional conversations or emails</p> <p>19 with regard to this \$2.50 fee being reinstituted</p> <p>20 in the holiday season of 2005?</p> <p>21 A. I can't recall.</p> <p>22 Q. Would you have any additional emails</p> <p>23 or documentation or notations having to do with</p> <p>24 October, November 2005 and the reinstitution of</p>
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<p>1 Is there any other \$2.50 fee that these people</p> <p>2 would be involved with?</p> <p>3 A. Not that I can think of.</p> <p>4 Q. So would it be a fair</p> <p>5 characterization -- would it be a fair assumption</p> <p>6 on our part to assume that this \$2.50 fee has to</p> <p>7 do with the fee on the gift card? Maintenance fee</p> <p>8 on the gift card.</p> <p>9 A. Are you asking me whether I think you</p> <p>10 should assume that?</p> <p>11 Q. Whether it's a fair assumption given</p> <p>12 who this is going to.</p> <p>13 A. It makes sense.</p> <p>14 Q. How about with regard to the timing?</p> <p>15 We know that in the beginning of 2005, Vernon Hill</p> <p>16 said no more fees, and we know that sometime</p> <p>17 subsequently the fees were reinstituted, right?</p> <p>18 A. Yes.</p> <p>19 Q. Would that sometime subsequently be</p> <p>20 around October or November of 2005?</p> <p>21 A. The holiday season in 2005, correct.</p> <p>22 Q. So this would dovetail nicely into</p> <p>23 that, this email?</p> <p>24 A. That's correct.</p>	<p>1 the fee?</p> <p>2 A. Not that I'm aware of.</p> <p>3 Q. Have you personally checked your</p> <p>4 computer emails for any such emails in 2005?</p> <p>5 A. Clarify the question.</p> <p>6 Q. Have you personally checked your</p> <p>7 computer emails to see if you have any outstanding</p> <p>8 emails that you have not produced to counsel from</p> <p>9 2005 when this fee was reinstituted?</p> <p>10 A. So I've checked my emails for every</p> <p>11 email relative to gift card for counsel. Did I</p> <p>12 read them all? No. If it had gift card on it, I</p> <p>13 sent it to him.</p> <p>14 Q. But this email doesn't have gift card</p> <p>15 anywhere on it, does it?</p> <p>16 A. No, it doesn't.</p> <p>17 Q. Is this an email that you produced to</p> <p>18 counsel?</p> <p>19 A. No, I don't believe I did.</p> <p>20 Q. Okay. So is it possible that you</p> <p>21 didn't capture all of the materials on your email</p> <p>22 with regard to gift cards because you just did a</p> <p>23 search for gift cards?</p> <p>24 A. Any card -- any email relative to</p>

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<p>1 gift card I provided to counsel.</p> <p>2 Q. But you didn't provide this one.</p> <p>3 A. Who says I have it?</p> <p>4 Q. I don't know whether you did or you</p> <p>5 didn't. I'm going a little bit to the side of an</p> <p>6 issue.</p> <p>7 A. Okay.</p> <p>8 Q. When you did your search and provided</p> <p>9 the emails to counsel, did you do a search?</p> <p>10 A. I didn't personally do a search.</p> <p>11 Q. Did you direct a search be done?</p> <p>12 A. Yes.</p> <p>13 Q. And when you directed a search be</p> <p>14 done, who did you direct that to?</p> <p>15 A. To technology.</p> <p>16 Q. And did you say, "Give me every email</p> <p>17 on my computer that relates to --"</p> <p>18 A. "-- gift card."</p> <p>19 Q. And if gift card wasn't in the</p> <p>20 subject matter, would that email come up?</p> <p>21 A. I believe if gift card wasn't</p> <p>22 anywhere in the content of the email --</p> <p>23 Q. Okay.</p> <p>24 A. -- it would not have come up.</p>	<p>1 ask the witness if he can approximate.</p> <p>2 MR. FODERA: Yeah, I am, that's</p> <p>3 what I'm doing.</p> <p>4 THE WITNESS: I would say less</p> <p>5 than twenty-five emails they came up with.</p> <p>6 BY MR. FODERA:</p> <p>7 Q. Were some of them multiple-page</p> <p>8 emails or were they all one-page emails?</p> <p>9 A. Typically they're one page.</p> <p>10 Q. Okay.</p> <p>11 A. Some had attachments.</p> <p>12 Q. Okay. Now, we talked about this</p> <p>13 particular email. Now let me ask you about the</p> <p>14 substance of it. Do you have any recollection of</p> <p>15 any conversations, whatsoever, on or about October</p> <p>16 or November of 2005 with Kevin Barry with regard</p> <p>17 to a \$2.50 fee?</p> <p>18 A. I don't recall.</p> <p>19 Q. Do you have any recollections with</p> <p>20 regard to Dennis DiFlorio in 2005 with regard to a</p> <p>21 \$2.50 fee?</p> <p>22 A. I don't recall.</p> <p>23 Q. Now, Dennis, at least by my looking</p> <p>24 at this Grimmer-1, was between you and Vernon</p>
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<p>1 Did I answer that right?</p> <p>2 Q. The converse, your understanding,</p> <p>3 correct me if I'm wrong, your understanding is if</p> <p>4 the words gift card appeared anywhere on the</p> <p>5 gift card, it would be captured?</p> <p>6 A. Correct.</p> <p>7 Q. All right. And did you come up with</p> <p>8 emails?</p> <p>9 A. Yes.</p> <p>10 Q. How many?</p> <p>11 A. I don't know.</p> <p>12 Q. Can you approximate? A thousand?</p> <p>13 A. No.</p> <p>14 Q. Ten?</p> <p>15 A. I can't approximate.</p> <p>16 Q. A hundred?</p> <p>17 A. I didn't count them.</p> <p>18 Q. I understand that. Was it a stack of</p> <p>19 papers? Was it two pieces of paper?</p> <p>20 A. No, it's more than two pieces of</p> <p>21 paper.</p> <p>22 Q. Was it fifty pieces of paper? Was it</p> <p>23 a ream?</p> <p>24 MR. HARVEY: I think you can</p>	<p>1 Hill, right? He's two up from you?</p> <p>2 A. True.</p> <p>3 Q. At that time. Did this hold true in</p> <p>4 October -- and "this" I mean Grimmer-1, was this</p> <p>5 the structure in October of 2005? You had changed</p> <p>6 positions, but I don't know if you changed levels.</p> <p>7 MR. HARVEY: I don't know that</p> <p>8 he did testify that he -- he said he didn't</p> <p>9 know when in 2005 he changed positions, I</p> <p>10 believe.</p> <p>11 MR. FODERA: No, he's testified</p> <p>12 that as of October of 2005, he was already</p> <p>13 the director of retail operations.</p> <p>14 MR. HARVEY: Maybe I'm wrong.</p> <p>15 BY MR. FODERA:</p> <p>16 Q. Didn't you say that?</p> <p>17 A. I believe I said that, yes.</p> <p>18 MR. HARVEY: My mistake.</p> <p>19 BY MR. FODERA:</p> <p>20 Q. So my question is I want to know</p> <p>21 where are you relative to Dennis DiFlorio after</p> <p>22 you changed positions when this email was</p> <p>23 generated.</p> <p>24 A. This would be replaced with Linda</p>

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<p>1 Verba. So Linda Verba is on this vertical, and 2 I'm still here, Dennis is still here, Vernon's 3 still there. 4 Q. All right. So you're at the same 5 level? 6 A. Basically, yes. 7 Q. So you're two steps away from Dennis 8 DiFlorio? 9 A. One step away from Dennis DiFlorio. 10 Q. Correct. Okay. Can you, as you sit 11 here today, give me any reason, whatsoever, as to 12 why you would have been included in this email 13 that says, "Okay to go with the 2.50 fee," in 14 2005? 15 A. It's an FYI, I'm cc'd on it. 16 Q. I understand you're cc'd on it. It's 17 an FYI? 18 A. It's an FYI to me because I'm only 19 cc'd on it. It's not directed to me. 20 Q. Do you read this email, since it's 21 from Dennis DiFlorio, as a pronouncement that now 22 the fee will be \$2.50 or is it still something 23 that's up for debate, or maybe you have no 24 position at all?</p>	<p>1 A. Yeah, I can't recall exactly who had 2 a gift card. 3 Q. Were you involved in any discussions 4 where -- and these discussions may or may not have 5 occurred at all, where revenue generated from 6 maintenance fees were discussed in terms of being 7 a profit center for the bank? 8 A. No. 9 Q. At any time with anyone? Did you 10 ever hear or know of such discussions? 11 A. Discussions on -- repeat the 12 question, I'm sorry. 13 Q. Whether maintenance fees, fees such 14 as the \$2.50 per month fee after twelve months 15 were discussed as a profit center for the bank. 16 A. No. 17 Q. Do you have an understanding of what 18 a profit center is? 19 A. Yes. 20 Q. What is your understanding what a 21 profit center is? 22 A. It's profit from the product that you 23 sell. 24 Q. Okay. Do you have any information or</p>
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<p>1 A. It's okay to go with it. 2 Q. So Dennis is saying the \$2.50 fee is 3 back in? 4 A. Okay to go with it. 5 Q. I'm trying to find out what, "Okay to 6 go with it," means to you, coming from Dennis 7 DiFlorio. Understanding that if it was coming 8 from the janitor, it would have a different 9 meaning entirely, or it may have. 10 A. Yes. 11 Q. So what's the answer to the question? 12 A. Yes, it's okay to go with the 2.50 13 fee. 14 Q. Okay. Is there anyone in this email 15 string from legal? 16 A. There is not. 17 Q. You said, when I asked you about why 18 it was reinstituted, at least your understanding 19 as to why the fee was reinstituted, you said 20 possibly, among other things, that other 21 retailers, other banks were having a fee. Can you 22 tell me to your understanding from the time what 23 other banks had gift cards and had a fee other 24 than American Express? You did mention them.</p>	<p>1 understanding at all with regard to the cost of 2 Commerce or TD Bank cards? 3 A. There is cost to the card. 4 Q. I would assume that. But do you have 5 any understanding as to what that cost was at any 6 time? 7 A. Not specific costs, no. 8 Q. What about during the pilot program, 9 were you involved in the cost -- 10 A. No. 11 Q. -- costing out the materials and 12 things of that nature? 13 A. No. 14 Q. Is the TD Bank -- to your 15 understanding, is the TD Bank -- was the Commerce 16 Bank card a profit center? 17 A. I'm sure we made a profit on it. 18 Q. And to your understanding, is a 19 TD Bank card a profit center? 20 A. I would assume it is. 21 Q. As the senior vice president of store 22 operations, do you have to in the course of your 23 responsibilities -- strike that. 24 As the senior vice president of</p>

32 (Pages 122 to 125)

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<p>1 store operations, are you looking at what parts of</p> <p>2 your branches are profitable and what parts are</p> <p>3 not?</p> <p>4 A. No.</p> <p>5 Q. Do you have anything, any</p> <p>6 responsibility at all with regard to the</p> <p>7 profitability of any aspect of banking operations?</p> <p>8 A. No.</p> <p>9 Q. Who does have the responsibility for</p> <p>10 the -- to know the profitability of the various</p> <p>11 aspects of store operations?</p> <p>12 A. That's a different question.</p> <p>13 Q. I know.</p> <p>14 A. Who has the responsibility of --</p> <p>15 well, we're not a profit center, store operations,</p> <p>16 so that's pretty difficult to have a profit run</p> <p>17 expense center.</p> <p>18 Q. Okay.</p> <p>19 A. We don't bring in income. We don't</p> <p>20 book income.</p> <p>21 Q. The flip side of that is who does.</p> <p>22 Who knows? If I wanted to ask somebody at TD Bank</p> <p>23 how profitable is this aspect of your store</p> <p>24 operations or this aspect or gift cards, who would</p>	<p>1 BY MR. FODERA:</p> <p>2 Q. Where did he come from?</p> <p>3 A. He came from TD CT, TD Bank -- TD --</p> <p>4 Q. Canada.</p> <p>5 A. -- Canada Trust.</p> <p>6 Q. Okay. The person who had the job</p> <p>7 before him, is he still there?</p> <p>8 A. I would say no.</p> <p>9 Q. Who is that person?</p> <p>10 A. I'm thinking it would be Joe Manion.</p> <p>11 Q. Do you know where Joe Manion went?</p> <p>12 A. No, I don't.</p> <p>13 Q. How old was Joe Manion? In his 50s,</p> <p>14 in his 60s?</p> <p>15 A. Younger.</p> <p>16 Q. Younger. Okay.</p> <p>17 A. Late 30s, maybe.</p> <p>18 Q. Do you know if any of the gift cards</p> <p>19 that you have ever purchased personally and given</p> <p>20 to friends and family have had fees assessed?</p> <p>21 A. I don't know personally.</p> <p>22 Q. Has anybody ever come back to you --</p> <p>23 A. Never.</p> <p>24 Q. -- and said, "Yo?"</p>
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<p>1 that person be that I would be asking?</p> <p>2 A. Finance.</p> <p>3 Q. Who in finance?</p> <p>4 A. The retail finance guy.</p> <p>5 Q. Who is that?</p> <p>6 A. Paul Masterson.</p> <p>7 Q. How long has Paul Masterson been</p> <p>8 there, if you know?</p> <p>9 A. Less than a year. Excuse me. Let me</p> <p>10 clarify.</p> <p>11 Q. Go ahead.</p> <p>12 A. He's been with TD Bank U.S.A. or</p> <p>13 America's Most Convenient Bank for less than a</p> <p>14 year. He is a TD Bank legacy person from Canada.</p> <p>15 Q. All right. So he's come down from</p> <p>16 TD?</p> <p>17 A. Yes.</p> <p>18 Q. Toronto-Dominion?</p> <p>19 A. Yes.</p> <p>20 MR. HARVEY: Just to clarify,</p> <p>21 Toronto-Dominion, the Toronto-Dominion Bank</p> <p>22 is something altogether separate from what</p> <p>23 was called TD Bank, N.A., just so you're</p> <p>24 clear on that.</p>	<p>1 A. No.</p> <p>2 Q. Is it your understanding -- and I get</p> <p>3 this from your materials, your sales materials.</p> <p>4 Is it your understanding that with the TD Bank</p> <p>5 card you have to tell the retailer a specific</p> <p>6 amount to charge and it's either accepted or</p> <p>7 declined?</p> <p>8 A. No.</p> <p>9 Q. I say that because in your</p> <p>10 gift cards -- in your materials, and I could pull</p> <p>11 it out, they use the example of going to get gas,</p> <p>12 and gas could be \$75 to fill up your tank, and if</p> <p>13 you put a \$25 gift card into the gas machine, it's</p> <p>14 going to be rejected because it's not \$75. Do you</p> <p>15 recall that --</p> <p>16 A. Yes.</p> <p>17 Q. -- from your own materials?</p> <p>18 So what is your understanding</p> <p>19 of what happened, if any, maybe you don't have an</p> <p>20 understanding, when you take that gift card and</p> <p>21 you go to a retailer and you say, "Okay, I want to</p> <p>22 get gas," and you put it in there, is it just</p> <p>23 rejected, is it accepted to a certain point, will</p> <p>24 it tell you how much is on the card, or do you</p>

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<p>1 have to call a number to find out what's on the 2 card?</p> <p>3 A. It doesn't tell you how much is on 4 the card.</p> <p>5 Q. Okay.</p> <p>6 A. You call the number, you sign online. 7 I think actually in our training material it tells 8 people that they should tell them they should know 9 the balance or validate the balance before you use 10 the card.</p> <p>11 Q. And your materials do say that --</p> <p>12 A. Yes.</p> <p>13 Q. -- that they should -- you know, 14 people can call and register the card --</p> <p>15 A. Register.</p> <p>16 Q. -- call and get a balance for the 17 card. But --</p> <p>18 A. You don't have to register to get a 19 balance, but you can call and register the card.</p> <p>20 Q. For a person walking into a retailer 21 and if they say, "Okay, I want to buy this cup," 22 and this cup is \$23, and I have a \$25 card that 23 I've had in my pocket for the last year and a 24 half, and I give them that card, and it's \$23, but</p>	<p>1 that you can think of that there was never a 2 sticker put on the front of the card that the 3 customer service representative could just put in 4 the date that the card was issued or activated?</p> <p>5 MR. HARVEY: Can I have that 6 question read back, please.</p> <p>7 (The court reporter read back a 8 preceding portion of the proceedings as 9 directed:</p> <p>10 "Q. Can you tell me is there 11 any reason that you can think of that there 12 was never a sticker put on the front of the 13 card that the customer service 14 representative could just put in the date 15 that the card was issued or activated?")</p> <p>16 BY MR. FODERA:</p> <p>17 Q. Do you understand the question?</p> <p>18 A. Yeah. Well, we didn't have a 19 sticker.</p> <p>20 Q. My question is is there any reason 21 that you could think of why a sticker could not be 22 utilized in the Commerce program where the sticker 23 says activation date, and then the person fills in 24 the date of activation and that's right on the</p>
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<p>1 now this card's worth 22.50, is it your 2 understanding this card is just rejected or will 3 the retailer say, "Well, you have 22.50, you got 4 to come up with .50 in cash?"</p> <p>5 A. Depending on what processor you're 6 on, I think some will -- I think, not from 7 experience, I think some will accept it and tell 8 you the difference; others will say declined.</p> <p>9 Q. Okay. You see on the front of this 10 card, which hasn't been activated yet, there's a 11 sticker.</p> <p>12 A. Uh-huh.</p> <p>13 Q. And I don't know -- how long, to your 14 understanding, how long have there been stickers 15 on TD Bank cards?</p> <p>16 A. TD Bank legacy, I don't know.</p> <p>17 Q. How about since they came over and 18 bought off Commerce?</p> <p>19 A. This is the first year that I 20 remember a sticker.</p> <p>21 Q. And what about with regard to 22 Commerce, was there ever a sticker on it?</p> <p>23 A. Not on the gift card.</p> <p>24 Q. Can you tell me is there any reason</p>	<p>1 card?</p> <p>2 A. Any reason why?</p> <p>3 Q. Or issue date. Yes. Issue date, 4 yeah.</p> <p>5 A. I don't understand the purpose.</p> <p>6 Q. Well, twelve months later there's a 7 fee attached.</p> <p>8 A. Right, but that's disclosed there's a 9 fee attached to it.</p> <p>10 Q. But the person who receives the card 11 has no idea when the card was purchased. It's 12 twelve months from the date of purchase. Isn't 13 that your understanding?</p> <p>14 A. Yes. Well, it's the first day 15 following the twelfth month.</p> <p>16 Q. But if I'm like my sister and I do my 17 Christmas shopping in October or September, or 18 sometimes even July, and I buy Christmas card -- 19 gift cards, the person I'm giving that card to in 20 January, they have no way of knowing when that 21 card was issued; isn't that correct?</p> <p>22 A. Not from the card, no.</p> <p>23 Q. And wouldn't it be convenient if 24 there was a sticker on that card saying, issue</p>

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<p>1 date? Wouldn't you agree with that?</p> <p>2 A. I don't -- I don't see the need for</p> <p>3 it. That's just my perspective.</p> <p>4 Q. Well, my question is --</p> <p>5 A. People typically use the card.</p> <p>6 Q. -- wouldn't it be convenient.</p> <p>7 A. Would it be convenient?</p> <p>8 Q. Yes, if there's a fee attached to an</p> <p>9 issue date thirteen months later, wouldn't it be</p> <p>10 convenient if the issue date was right there on</p> <p>11 the front of the card?</p> <p>12 MR. HARVEY: Object to the form</p> <p>13 of the question.</p> <p>14 MR. FODERA: You can answer the</p> <p>15 question.</p> <p>16 THE WITNESS: I'm sorry, you're</p> <p>17 going to have to repeat the question again.</p> <p>18 MR. FODERA: Would you read</p> <p>19 back the question.</p> <p>20 (The court reporter read back a</p> <p>21 preceding portion of the proceedings as</p> <p>22 directed:</p> <p>23 "Q. Yes, if there's a fee</p> <p>24 attached to an issue date thirteen months</p>	<p>1 the gift card program. I know that you were in</p> <p>2 charge of the gift card program, but somebody put</p> <p>3 that plan together. Who was that?</p> <p>4 A. Kevin Barry.</p> <p>5 Q. Kevin Barry?</p> <p>6 A. Uh-huh.</p> <p>7 Q. And I just want to be clear, when TD</p> <p>8 bought Commerce --</p> <p>9 A. Uh-huh.</p> <p>10 Q. -- to your understanding, did TD</p> <p>11 legacy, I guess, did TD already have a gift card</p> <p>12 program?</p> <p>13 A. Yes.</p> <p>14 Q. Do you know who put TD's gift card</p> <p>15 program together?</p> <p>16 A. I don't.</p> <p>17 Q. Would I be right that you had nothing</p> <p>18 to do with the sizing, the typing, and the font of</p> <p>19 the stuff on this card, you're not the right</p> <p>20 person to ask about that?</p> <p>21 A. No, I did not have anything to do</p> <p>22 with that.</p> <p>23 Q. Do you know who would be the right</p> <p>24 person to ask about that?</p>
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<p>1 later, wouldn't it be convenient if the</p> <p>2 issue date was right there on the front of</p> <p>3 the card?")</p> <p>4 THE WITNESS: Describe</p> <p>5 convenient for me.</p> <p>6 BY MR. FODERA:</p> <p>7 Q. What is your understanding of the</p> <p>8 term convenient --</p> <p>9 A. Simple --</p> <p>10 Q. -- do you have an understanding of</p> <p>11 it?</p> <p>12 A. -- makes it easy.</p> <p>13 Q. Right. Use that. Isn't it easier</p> <p>14 for the consumer if they know right there on the</p> <p>15 front of the card the issue date?</p> <p>16 A. I would say yes.</p> <p>17 Q. Okay. Is there any reason that</p> <p>18 you're aware of that an issue date on a sticker</p> <p>19 wasn't utilized by either Commerce or TD Bank?</p> <p>20 A. There's no reason I'm aware of, no.</p> <p>21 Q. Okay. Can you tell me, and maybe you</p> <p>22 don't know, maybe you do, somebody actually</p> <p>23 thought this idea up at TD -- at Commerce Bank and</p> <p>24 somebody put together the whole plan of let's have</p>	<p>1 A. That would be the product guys.</p> <p>2 Q. Goldberg.</p> <p>3 A. Goldman.</p> <p>4 Q. Goldman.</p> <p>5 A. Barry.</p> <p>6 Q. Suneal?</p> <p>7 A. Suneal's really new to the game, so I</p> <p>8 don't know if he'd be appropriate. Matt</p> <p>9 Chevalier.</p> <p>10 Q. Okay. All right. Fair enough.</p> <p>11 A. I'm probably guessing here. It's</p> <p>12 relative to write Visa regulations on card design.</p> <p>13 They're pretty strict.</p> <p>14 Q. Okay. Do you know if the bank has to</p> <p>15 pay Visa any fees?</p> <p>16 A. I'm assuming they do, yes. They're a</p> <p>17 provider, service provider.</p> <p>18 Q. And, again, I've got tons of</p> <p>19 advertising materials here. I could show you</p> <p>20 pictures of posters in the TD Banks, but I don't</p> <p>21 have to because you know them, you've seen them.</p> <p>22 A. I would assume, yes.</p> <p>23 Q. Who puts all that stuff together, the</p> <p>24 advertising?</p>

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<p>1 A. Marketing.</p> <p>2 Q. Those are people whose names you've</p> <p>3 already given me or are there other people?</p> <p>4 A. Lise Moncilovich, you have.</p> <p>5 Q. Yeah.</p> <p>6 A. Allegra Sandelli would be the other</p> <p>7 person.</p> <p>8 Q. Allegra Sandelli?</p> <p>9 A. Uh-huh.</p> <p>10 Q. S-A-N-D-E-L-L...</p> <p>11 A. S-A-N-D-E...</p> <p>12 Q. Oh, she's here, yeah.</p> <p>13 A. -- L-L-L.</p> <p>14 Q. And Allegra, was she -- we know that</p> <p>15 she was here at Commerce. Is she still here?</p> <p>16 A. Yes.</p> <p>17 Q. Is she still in the same position?</p> <p>18 A. Yes.</p> <p>19 Q. What is her position?</p> <p>20 A. I guess her title is director of</p> <p>21 marketing advertising.</p> <p>22 Q. These cards are marketed as free,</p> <p>23 correct?</p> <p>24 A. Correct.</p>	<p>1 A. Ten months? Yeah, yeah, yeah.</p> <p>2 I'm sorry.</p> <p>3 Q. \$2.50 a month, ten months is \$25.</p> <p>4 A. Yes.</p> <p>5 Q. And it starts on the thirteenth</p> <p>6 month. So twenty-three months after the card is</p> <p>7 purchased, a \$25 card is gone.</p> <p>8 A. No value.</p> <p>9 Q. No value. Do you think that's fair?</p> <p>10 MR. HARVEY: Object to the form</p> <p>11 of that question.</p> <p>12 BY MR. FODERA:</p> <p>13 Q. That a depositor comes in, gives</p> <p>14 25 bucks, if somebody takes it and puts it in</p> <p>15 their drawer for thirteen -- for a year -- just</p> <p>16 under two years and the card has no value, do you</p> <p>17 think that's fair?</p> <p>18 MR. HARVEY: Same objection.</p> <p>19 THE WITNESS: I think -- yeah,</p> <p>20 I mean it costs money to maintain the card.</p> <p>21 BY MR. FODERA:</p> <p>22 Q. How much?</p> <p>23 A. I have no idea.</p> <p>24 Q. Who would?</p>
Page 135	Page 137
<p>1 Q. What does free mean to you?</p> <p>2 A. Free to the consumer purchasing the</p> <p>3 card.</p> <p>4 Q. Assuming that there's a monthly</p> <p>5 service fee after the thirteenth month, do you</p> <p>6 think that that could confuse a customer to say</p> <p>7 that it's free?</p> <p>8 MR. HARVEY: Object to the form</p> <p>9 of the question.</p> <p>10 BY MR. FODERA:</p> <p>11 Q. You can answer the question. Do you</p> <p>12 think that can confuse a customer?</p> <p>13 A. It didn't confuse me as a customer.</p> <p>14 It's free to get the card. I didn't pay anything</p> <p>15 as a consumer.</p> <p>16 Q. If you have a \$25 card, gift card,</p> <p>17 and you wait two years, how much is on that card</p> <p>18 before you use it?</p> <p>19 A. I don't have a calculator here.</p> <p>20 Q. Well, at \$2.50 a month how long does</p> <p>21 it take to eat up the whole card, to eat up a --</p> <p>22 A. Twelve months.</p> <p>23 Q. To eat up a \$25 card, it would take</p> <p>24 ten months.</p>	<p>1 A. The product guy.</p> <p>2 Q. Goldman?</p> <p>3 A. Or Chevalier.</p> <p>4 Q. Okay. Are you aware or do you know</p> <p>5 whether or not consumers, some consumers will say,</p> <p>6 "Boy, I'd like to get X," and they'll, knowing in</p> <p>7 this commerce that we have now that they'll get</p> <p>8 two, three, four gift cards, a couple for their</p> <p>9 birthday, a couple for Christmas, you know, a</p> <p>10 couple for the 4th of July, I don't know, Father's</p> <p>11 Day, dads and grads, and they'll save up</p> <p>12 gift cards so that they could go use all of them</p> <p>13 at once for a special purchase, are you aware of</p> <p>14 that in marketing at all?</p> <p>15 A. No.</p> <p>16 Q. Have you ever heard of that?</p> <p>17 A. No.</p> <p>18 Q. As the vice president of store</p> <p>19 operations, are you responsible or involved in any</p> <p>20 way with employee discipline?</p> <p>21 A. Indirectly.</p> <p>22 Q. What does that mean?</p> <p>23 A. Meaning people will bump things up to</p> <p>24 me about situations and say, you know,</p>

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<p>1 historically across the organization how we</p> <p>2 handled this. I don't particularly terminate the</p> <p>3 person, though.</p> <p>4 Q. Maybe my question was inartfully</p> <p>5 phrased. If you've got a customer service</p> <p>6 representative at Branch 1234 and that customer</p> <p>7 service representative is going to be terminated,</p> <p>8 does that come across your desk --</p> <p>9 A. No.</p> <p>10 Q. -- at all?</p> <p>11 A. No.</p> <p>12 Q. Okay. So you would be involved in</p> <p>13 termination on a policy level?</p> <p>14 A. No, that would be HR.</p> <p>15 Q. Okay.</p> <p>16 A. I would be involved if there is a</p> <p>17 questionable practice and they want clarification</p> <p>18 on, you know, cash handling, precedent on prior</p> <p>19 terminations in a similar situation, just so that</p> <p>20 we -- you know, for fairness type of situations.</p> <p>21 Q. And the flip side, what about hiring?</p> <p>22 A. I don't particularly hire people, no.</p> <p>23 Q. Not at the branch level.</p> <p>24 A. No.</p>	<p>1 retail perspective for anything in-store that's</p> <p>2 systems related.</p> <p>3 Q. Do they oversee the gift card</p> <p>4 operation?</p> <p>5 A. No.</p> <p>6 Q. The systems portion of it?</p> <p>7 A. No, they don't develop. They work</p> <p>8 alongside with the systems technology group to</p> <p>9 say, "Well, that field should go here because it's</p> <p>10 easier for the teller to use." It's design, not</p> <p>11 development.</p> <p>12 Q. Oh, okay. So if somebody thought</p> <p>13 that a different screen on the Card Genie was</p> <p>14 necessary, it would go through that department?</p> <p>15 A. They would help in the design of it,</p> <p>16 yes.</p> <p>17 Q. Are they basically IT guys?</p> <p>18 A. No, they're actually retail guys,</p> <p>19 former tellers, CSRs, trainers.</p> <p>20 Q. What about on the lending end, do</p> <p>21 you --</p> <p>22 A. Nothing with lending.</p> <p>23 Q. -- are you responsible for that?</p> <p>24 A. Nothing with lending.</p>
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<p>1 Q. I mean if somebody comes in for a</p> <p>2 teller job, you're not involved?</p> <p>3 A. I have nothing to do with that.</p> <p>4 Q. What about the branch manager?</p> <p>5 A. The branch manager would be involved.</p> <p>6 Q. You're involved in that?</p> <p>7 A. No, no, no, no. I'm sorry.</p> <p>8 Q. I'm sorry. I want to know what</p> <p>9 you're involved in.</p> <p>10 A. No.</p> <p>11 Q. Are you involved in any hiring</p> <p>12 decisions?</p> <p>13 A. My own staff.</p> <p>14 Q. Okay. How big is your staff?</p> <p>15 A. A hundred and fifty, approximately.</p> <p>16 Q. And who -- what is that comprised of?</p> <p>17 A. Regional operations officers</p> <p>18 throughout the network, reconciliation and cash</p> <p>19 handling department and a retail solutions and</p> <p>20 service delivery department.</p> <p>21 Q. That's a mouthful.</p> <p>22 A. That is.</p> <p>23 Q. What is that?</p> <p>24 A. They outline the requirements from a</p>	<p>1 Q. Not even the retail?</p> <p>2 A. Not even the retail.</p> <p>3 Q. Joe Blow comes in and wants to buy a</p> <p>4 car from a, you know, customer service manager,</p> <p>5 you've got nothing to do with that?</p> <p>6 A. Nothing to do with that.</p> <p>7 Can I just clarify something?</p> <p>8 Q. Sure. I told you in the beginning</p> <p>9 you can clarify anything.</p> <p>10 A. Go back to the question regarding</p> <p>11 hiring. The only thing that I am involved in is</p> <p>12 that I will approve levels of store hires. So in</p> <p>13 other words, you can have five tellers and six</p> <p>14 CSRs and a manager and assistant manager.</p> <p>15 Q. Oh, okay.</p> <p>16 A. If they want exceptions to that, they</p> <p>17 have to come through me to get an exception.</p> <p>18 Q. Would it be fair to say that the size</p> <p>19 of the branch is determined by the volume that the</p> <p>20 branch will have?</p> <p>21 A. And hours of operations.</p> <p>22 Q. Are you still opening new branches?</p> <p>23 A. Absolutely. Thirty-five this year.</p> <p>24 Q. Do you go to the openings?</p>

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<p>1 A. I haven't since the integration. In</p> <p>2 the past, almost every one.</p> <p>3 Q. What do you mean since the</p> <p>4 integration? From Commerce to TD?</p> <p>5 A. Yes. I've been working on other</p> <p>6 things.</p> <p>7 Q. Okay. What's your biggest growth</p> <p>8 area geographically?</p> <p>9 A. Metro New York would still be a big</p> <p>10 growth area. Boston now is -- we just opened</p> <p>11 three in Boston. And Florida continues to be a</p> <p>12 future growth area.</p> <p>13 Q. How many branches do you have in</p> <p>14 Florida?</p> <p>15 A. Exact number, I don't know. I would</p> <p>16 say thirty-nine.</p> <p>17 Q. Relative to Pennsylvania.</p> <p>18 A. Small.</p> <p>19 Q. Is it concentrated in a certain area</p> <p>20 of Florida?</p> <p>21 A. Yes, East Coast.</p> <p>22 Q. East Coast from Miami Beach all the</p> <p>23 way up to St. Augustine or --</p> <p>24 A. No, East Coast Miami Beach to</p>	<p>1 Q. What about Virginia?</p> <p>2 A. Yes.</p> <p>3 Q. How many?</p> <p>4 A. I don't know the number exactly.</p> <p>5 Q. Ballpark.</p> <p>6 A. The Metro DC area would be about</p> <p>7 forty, including Virginia, Maryland, and DC,</p> <p>8 itself.</p> <p>9 Q. And as between the Philadelphia</p> <p>10 market and the New York market, which is the</p> <p>11 larger market?</p> <p>12 MR. HARVEY: Which is the</p> <p>13 larger market for them?</p> <p>14 MR. FODERA: Yes, for retail</p> <p>15 banking.</p> <p>16 MR. HARVEY: More stores?</p> <p>17 MR. FODERA: Yes. That's his</p> <p>18 area, director of store operations.</p> <p>19 THE WITNESS: You should know</p> <p>20 that, right? Can you clarify New York,</p> <p>21 though?</p> <p>22 BY MR. FODERA:</p> <p>23 Q. What's the New York Metro market?</p> <p>24 A. Okay. So Philadelphia is bigger than</p>
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<p>1 Palm Beach.</p> <p>2 Q. And is it mostly Broward County or is</p> <p>3 it --</p> <p>4 A. It's a mix between Broward and Palm</p> <p>5 and Miami-Dade.</p> <p>6 Q. And does it extend westward past</p> <p>7 Alligator Alley or no?</p> <p>8 A. No.</p> <p>9 Q. No?</p> <p>10 A. West Palm, Jupiter, Fort Lauderdale,</p> <p>11 Boca.</p> <p>12 Q. So are you trying to build an</p> <p>13 original clientele or is it a snowbird clientele?</p> <p>14 A. It's more of a snowbird.</p> <p>15 Miami would be more original. The Palms and</p> <p>16 Broward are more snowbird clientele from</p> <p>17 Pennsylvania and New York.</p> <p>18 Q. What about your North Carolina</p> <p>19 branches?</p> <p>20 A. We don't have any.</p> <p>21 Q. What about South Carolina?</p> <p>22 A. None.</p> <p>23 Q. What about Georgia?</p> <p>24 A. None.</p>	<p>1 New York Metro.</p> <p>2 Q. Okay. And is the New York Metro</p> <p>3 market the five-county area or do you go up to</p> <p>4 Connecticut or --</p> <p>5 A. No. Actually, in our Metro New York</p> <p>6 we count North and Central Jersey as part of Metro</p> <p>7 New York.</p> <p>8 Q. Everything from Cranbury north?</p> <p>9 A. Basically, yeah, like above Mercer</p> <p>10 County.</p> <p>11 Q. Okay. All right. What about</p> <p>12 Connecticut?</p> <p>13 A. Connecticut is its own market.</p> <p>14 Q. And how big is that?</p> <p>15 A. Seventy-nine stores.</p> <p>16 Q. What about Massachusetts,</p> <p>17 Rhode Island?</p> <p>18 A. Rhode Island, none. Massachusetts to</p> <p>19 Boston area, I don't know the exact number of</p> <p>20 stores, all new to me.</p> <p>21 Q. Boston area pick up New Hampshire in</p> <p>22 the Metro Boston market?</p> <p>23 A. New Hampshire/Maine is one metro</p> <p>24 market.</p>

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<p>1 Q. Okay. And relative to the</p> <p>2 Connecticut market is the --</p> <p>3 A. It's bigger.</p> <p>4 Q. -- Boston market bigger?</p> <p>5 It's bigger?</p> <p>6 A. Oh, I'm sorry. I'll wait for you to</p> <p>7 answer -- ask the question.</p> <p>8 Q. Relative to the Connecticut market is</p> <p>9 the Boston market bigger or smaller?</p> <p>10 A. The Massachusetts market is bigger.</p> <p>11 Q. Okay. You go out Western Mass,</p> <p>12 Springfield?</p> <p>13 A. Yes.</p> <p>14 Q. The whole state?</p> <p>15 A. The whole state.</p> <p>16 Q. Is that the third largest market you</p> <p>17 have?</p> <p>18 A. It could be the fourth relative to</p> <p>19 Maine and New Hampshire.</p> <p>20 Q. If you're picking up Maine and</p> <p>21 New Hampshire you mean?</p> <p>22 A. We have Maine and New Hampshire.</p> <p>23 They're one metro market to us.</p> <p>24 Q. All right.</p>	<p>1 disclosure of the \$2.50 per month fee in the</p> <p>2 thirteenth month, and just in generally the</p> <p>3 materials, and I recall you saying to me, "Well,</p> <p>4 in the Q and A there's a disclosure in -- in the</p> <p>5 materials, in the Q and A materials there's a</p> <p>6 disclosure of \$2.50 per month fee to the employees</p> <p>7 to tell a person." Do you recall that line of</p> <p>8 questioning?</p> <p>9 A. I recall the line of questioning.</p> <p>10 Q. In the Q and A portion of the</p> <p>11 training materials, would you agree with me the</p> <p>12 Q and A are when customers ask you questions,</p> <p>13 these are the answers you give the customers?</p> <p>14 That's what a Q and A is.</p> <p>15 A. Yeah, it's prepping the employee to</p> <p>16 handle the inquiries or the customer interactions</p> <p>17 they may have relative to the gift card.</p> <p>18 Q. Okay. Would you agree with me that</p> <p>19 in the context of a Q and A the subject of \$2.50</p> <p>20 fees may have come up, but there's nothing in the</p> <p>21 marketing materials that I have seen, and I'd like</p> <p>22 you to confirm or deny this, there's nothing in</p> <p>23 the marketing materials that affirmatively tells</p> <p>24 the bank employee, tell the client -- tell the</p>
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<p>1 A. I would say they're equal to, maybe a</p> <p>2 little bit bigger than the Metro Boston market</p> <p>3 right now.</p> <p>4 Q. Philly, New York, DC, Boston?</p> <p>5 A. Uh-huh. No. Philly, New York,</p> <p>6 Massachusetts, Maine, Boston. I'm sorry.</p> <p>7 New Hampshire, Mass' -- Maine/New Hampshire --</p> <p>8 Philly, New York, Maine/New Hampshire,</p> <p>9 Massachusetts, Boston.</p> <p>10 Q. Okay.</p> <p>11 A. DC is smaller.</p> <p>12 Q. Thank you for the distinction. I</p> <p>13 didn't realize -- I thought -- I was counting that</p> <p>14 as one.</p> <p>15 MR. HARVEY: Counsel, we've</p> <p>16 been going for a while. Why don't we take</p> <p>17 a short break.</p> <p>18 MR. FODERA: That sounds good.</p> <p>19 (At this time, a recess was</p> <p>20 taken.)</p> <p>21 BY MR. FODERA:</p> <p>22 Q. Earlier we were talking about</p> <p>23 disclosures of the fees, and we had talked about</p> <p>24 in this video that there wasn't really a</p>	<p>1 purchaser about a \$2.50 per month fee?</p> <p>2 A. Marketing materials?</p> <p>3 Q. Yes.</p> <p>4 A. So it's in the disclosure. Marketing</p> <p>5 materials versus training materials?</p> <p>6 Q. Or training materials. Let's talk</p> <p>7 about training materials. Maybe I'm just</p> <p>8 inartfully phrasing it.</p> <p>9 A. So repeat the question regarding</p> <p>10 training materials.</p> <p>11 Q. In the training materials that I've</p> <p>12 reviewed I have not seen anything that</p> <p>13 affirmatively tells the TD or Commerce Bank</p> <p>14 employee, don't forget to tell the client about</p> <p>15 the -- don't forget to tell the purchaser about</p> <p>16 the \$2.50 per month fee commencing with the</p> <p>17 thirteenth month.</p> <p>18 A. It doesn't specifically say don't</p> <p>19 forget to tell the customer about a \$2.50 fee.</p> <p>20 Q. Okay.</p> <p>21 A. It does specifically say that you</p> <p>22 must provide the disclosure and the terms and</p> <p>23 conditions of the account, the gift card, which</p> <p>24 contains the \$2.50 fee.</p>

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<p>1 Q. I understand that. This video that</p> <p>2 we all watched that you starred in, would you</p> <p>3 agree that -- and I think we have said that that</p> <p>4 was pretty much an exemplar for how to sell the</p> <p>5 gift cards.</p> <p>6 MR. HARVEY: I object to the</p> <p>7 form of the question.</p> <p>8 BY MR. FODERA:</p> <p>9 Q. Do you understand the question?</p> <p>10 A. No.</p> <p>11 Q. It was used as a training tool for</p> <p>12 people selling the gift cards, this is how to do</p> <p>13 it.</p> <p>14 A. Yes, it was used as a knowledge base</p> <p>15 for the employees about gift card and selling</p> <p>16 gift cards, correct.</p> <p>17 Q. And what it is it's showing the</p> <p>18 employee how to sell the gift card. True?</p> <p>19 A. It shows experiences of selling the</p> <p>20 gift card; scenarios I guess is a good term.</p> <p>21 Q. Would you agree that nowhere in that</p> <p>22 video, in the mock sales portion of that video is</p> <p>23 the disclosure of a \$2.50 per month fee?</p> <p>24 A. They did not say anything about a</p>	<p>1 something?</p> <p>2 MR. FODERA: Correct.</p> <p>3 THE WITNESS: I don't recall it</p> <p>4 saying that.</p> <p>5 BY MR. FODERA:</p> <p>6 Q. And in the video -- and I think that</p> <p>7 this -- and correct me if I'm wrong, the purchaser</p> <p>8 gets a box that has the ribbon around it already</p> <p>9 and it's a closed unit. The purchaser, this is</p> <p>10 the way it's handed to them.</p> <p>11 A. The finished product is handled that</p> <p>12 way.</p> <p>13 Q. The finished product.</p> <p>14 A. Yes, that's true.</p> <p>15 Q. Now we got to describe it for the</p> <p>16 videographer (sic). So the finished product is</p> <p>17 the gift card with the terms and conditions in a</p> <p>18 box, the box is closed and the box has a ribbon</p> <p>19 around it. That's what's handed to the purchaser.</p> <p>20 A. Yes, it's a complete package.</p> <p>21 Q. Okay.</p> <p>22 A. But the video did show them preparing</p> <p>23 the box that I recall, putting the card in,</p> <p>24 putting the disclosure in, closing the box.</p>
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<p>1 \$2.50 fee.</p> <p>2 Q. And there's no disclosure in there</p> <p>3 about, read the terms and the conditions.</p> <p>4 We can take the time and read</p> <p>5 or watch it.</p> <p>6 A. No.</p> <p>7 No, not in the video, itself.</p> <p>8 Q. Right.</p> <p>9 A. It would be -- it would have been in</p> <p>10 the training material that accompanied the video,</p> <p>11 the Go Red campaign or America's Got Red, whatever</p> <p>12 it was called.</p> <p>13 Q. In the video it doesn't say anything</p> <p>14 about terms and conditions and telling the</p> <p>15 purchaser about terms and conditions.</p> <p>16 A. Not that I recall.</p> <p>17 Q. It doesn't tell -- the video, as I</p> <p>18 recall, does not tell the seller of the gift card</p> <p>19 to tell the purchaser to read anything.</p> <p>20 MR. HARVEY: Just to be clear,</p> <p>21 you want to know whether the video tells</p> <p>22 the seller to tell the customer --</p> <p>23 MR. FODERA: Correct.</p> <p>24 MR. HARVEY: -- to read</p>	<p>1 Q. And I don't mean to -- I agree.</p> <p>2 A. Okay.</p> <p>3 Q. Yeah, I agree. The video, the</p> <p>4 video -- the jury's going to see the video. It's</p> <p>5 there.</p> <p>6 A. Okay.</p> <p>7 Q. It is what it is. Would you agree</p> <p>8 that the video doesn't say anything at all about</p> <p>9 the -- about an issue date and fees accruing tied</p> <p>10 to an issue date?</p> <p>11 A. I would agree with that.</p> <p>12 Q. I don't think I actually asked this,</p> <p>13 but I might have: Is Vernon Hill still with the</p> <p>14 bank?</p> <p>15 A. No.</p> <p>16 Q. Where is he?</p> <p>17 A. (Indicating.)</p> <p>18 Q. When did he leave?</p> <p>19 A. No.</p> <p>20 Q. No?</p> <p>21 A. Don't know where he is.</p> <p>22 I want to say, guessing, I</p> <p>23 think it was June of 2007.</p> <p>24 Q. Do you know if he went to another</p>

<p style="text-align: center;">Page 154</p> <p>1 bank?</p> <p>2 A. I read in the paper he did.</p> <p>3 Q. What bank did you read in the paper</p> <p>4 that he went to?</p> <p>5 A. Metro Bank.</p> <p>6 Q. Where? What market?</p> <p>7 A. Philadelphia.</p> <p>8 Q. Okay. I asked you earlier about what</p> <p>9 documents you reviewed before you came to this</p> <p>10 deposition.</p> <p>11 A. Yes.</p> <p>12 Q. Do you recall that?</p> <p>13 A. Yes.</p> <p>14 Q. Can you tell me did you speak to</p> <p>15 anybody at TD Bank? Let me give you the ground</p> <p>16 rules. I'm not entitled to know anything that you</p> <p>17 spoke about with your lawyer and anything that</p> <p>18 your lawyer said to you as long as you and your</p> <p>19 lawyer are together. Okay?</p> <p>20 A. Uh-huh.</p> <p>21 Q. And that extends to anybody employed</p> <p>22 by Mr. Harvey or anybody who works with Mr. Harvey</p> <p>23 or anybody at the Pepper firm. But I am entitled</p> <p>24 to know about discussions you may have had with</p>	<p style="text-align: center;">Page 156</p> <p>1 BY MR. FODERA:</p> <p>2 Q. Have you seen this notice before?</p> <p>3 A. No.</p> <p>4 Q. Never?</p> <p>5 A. No.</p> <p>6 Q. Turn to Page -- the third page of</p> <p>7 this notice.</p> <p>8 MR. HARVEY: I'm going to</p> <p>9 object because he hadn't looked at the</p> <p>10 whole document when he answered your</p> <p>11 question, for the record.</p> <p>12 MR. FODERA: Okay.</p> <p>13 MR. HARVEY: He was just</p> <p>14 referring to the first page.</p> <p>15 MR. FODERA: I don't know what</p> <p>16 he was referring to. I don't know how you</p> <p>17 would know --</p> <p>18 MR. HARVEY: Because I watched</p> <p>19 him look at the first page and nothing else</p> <p>20 in answer to your question.</p> <p>21 MR. FODERA: Okay.</p> <p>22 MR. HARVEY: And he hadn't --</p> <p>23 he didn't do this.</p> <p>24 BY MR. FODERA:</p>
<p style="text-align: center;">Page 155</p> <p>1 other bank employees. So in preparation for this</p> <p>2 deposition did you discuss with any other TD Bank</p> <p>3 employee anything with regard to this deposition</p> <p>4 or preparation for it?</p> <p>5 A. Other than saying I was being deposed</p> <p>6 and telling people where I was, not detail of did</p> <p>7 you know this and did you know that or did you</p> <p>8 review this, no.</p> <p>9 Q. Okay. And that's -- did you ever</p> <p>10 see -- and let's mark this as Exhibit Number-3,</p> <p>11 it's a copy of the deposition notice.</p> <p>12 MR. HARVEY: I would also note</p> <p>13 that he told you before about talking with</p> <p>14 somebody about a training video.</p> <p>15 MR. FODERA: That's correct,</p> <p>16 and he went to get the training video and</p> <p>17 he found out that it was August of '06.</p> <p>18 THE WITNESS: But I was with</p> <p>19 you when we did that, that's why I didn't</p> <p>20 bring it up.</p> <p>21 (Document received and marked</p> <p>22 for identification Plaintiffs' Exhibit</p> <p>23 Grimmer-3, Notice of Deposition to TD Bank,</p> <p>24 N.A., consisting of 4 pages.)</p>	<p style="text-align: center;">Page 157</p> <p>1 Q. Why don't you look at the document</p> <p>2 and tell me if you've ever reviewed this document</p> <p>3 before.</p> <p>4 MR. HARVEY: Or any part of it.</p> <p>5 And I would suggest that you take the time</p> <p>6 to read it.</p> <p>7 BY MR. FODERA:</p> <p>8 Q. Now having had the opportunity to</p> <p>9 review the deposition notice, have you seen this</p> <p>10 before?</p> <p>11 A. I believe I saw Page 3 before.</p> <p>12 Q. Okay. And you've been put forth as a</p> <p>13 person in this deposition who has knowledge with</p> <p>14 regard to the defendants' gift card program.</p> <p>15 A. Correct.</p> <p>16 Q. Amongst other things.</p> <p>17 MR. HARVEY: I think it's for</p> <p>18 counsel to identify the topics on which</p> <p>19 he's going to testify about. I told you</p> <p>20 this yesterday, but just to be clear, I</p> <p>21 told you he is a witness that is being</p> <p>22 designated by TD Bank as one of the</p> <p>23 people --</p> <p>24 MR. FODERA: As one of the</p>

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<p>1 people, correct.</p> <p>2 MR. HARVEY: -- not the sole</p> <p>3 person on topics, he has some information,</p> <p>4 C, D, E, F, and G.</p> <p>5 MR. FODERA: That's correct.</p> <p>6 We're on the same page here.</p> <p>7 MR. HARVEY: We're always on</p> <p>8 the same page.</p> <p>9 BY MR. FODERA:</p> <p>10 Q. I'm going to adopt your client's --</p> <p>11 your attorney's statement here because we're on</p> <p>12 the same page, and you've been designated at least</p> <p>13 as a person with some information with regard to C</p> <p>14 through F. Now, with regard to the defendants'</p> <p>15 gift card --</p> <p>16 MR. HARVEY: C through G.</p> <p>17 MR. FODERA: C through G.</p> <p>18 BY MR. FODERA:</p> <p>19 Q. With regard to the defendants'</p> <p>20 gift card program -- and by defendants here, it</p> <p>21 means Commerce and TD Bank.</p> <p>22 A. Uh-huh.</p> <p>23 Q. -- you discussed with me the pilot</p> <p>24 program, you've discussed that period of time in</p>	<p>1 that -- this is an overall question here. I want</p> <p>2 to make sure that there's not a specific area of</p> <p>3 the program that you were responsible or involved</p> <p>4 with that I didn't ask about because I don't know</p> <p>5 the area exists.</p> <p>6 A. No.</p> <p>7 Q. So you've generally discussed all</p> <p>8 aspects of the gift card program? I understand</p> <p>9 that there may be specific questions that I</p> <p>10 haven't asked you.</p> <p>11 A. Yes.</p> <p>12 MR. HARVEY: Object to the form</p> <p>13 of the question. I don't know what you're</p> <p>14 asking this witness. I mean you want to</p> <p>15 know --</p> <p>16 MR. FODERA: He answered the</p> <p>17 question.</p> <p>18 MR. HARVEY: Well, I object to</p> <p>19 the form of that question. It's incumbent</p> <p>20 upon you to ask questions about the program</p> <p>21 rather than to ask him have I missed</p> <p>22 anything essentially.</p> <p>23 MR. FODERA: Well, there's -- I</p> <p>24 don't necessarily agree with you. If he's</p>
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<p>1 2005 up until the time you became store ops, and</p> <p>2 you discussed your limited role in the gift card</p> <p>3 program after 2005 when you went into store</p> <p>4 operations. Have you gone over pretty much all of</p> <p>5 the topics related to the gift card program? I</p> <p>6 know that I could probably ask questions for seven</p> <p>7 days, specific questions that you may or may not</p> <p>8 have more information about. But have you covered</p> <p>9 all of the topics of the gift card program that</p> <p>10 you've been involved with?</p> <p>11 MR. HARVEY: Object to the form</p> <p>12 of the question.</p> <p>13 BY MR. FODERA:</p> <p>14 Q. If you understand the question, you</p> <p>15 can answer it.</p> <p>16 A. I don't understand the question, but</p> <p>17 I have to clarify something.</p> <p>18 Q. Go ahead.</p> <p>19 A. So it's pilot 2004, 2005 --</p> <p>20 Q. Correct.</p> <p>21 A. -- till I took the new position.</p> <p>22 Q. Correct.</p> <p>23 A. Now repeat the question.</p> <p>24 Q. Well, I just want to make sure</p>	<p>1 been designated with knowledge in a</p> <p>2 specific area, I think that it's perfectly</p> <p>3 proper for me to say in terms of categories</p> <p>4 within your area have I covered all of the</p> <p>5 categories pertaining to your knowledge.</p> <p>6 It's a perfectly fine question.</p> <p>7 MR. HARVEY: I disagree.</p> <p>8 MR. FODERA: But that --</p> <p>9 BY MR. FODERA:</p> <p>10 Q. Answer that question. Have I covered</p> <p>11 all the categories of your knowledge with regard</p> <p>12 to the gift card program?</p> <p>13 MR. HARVEY: Object to the form</p> <p>14 of the question.</p> <p>15 THE WITNESS: One more time.</p> <p>16 BY MR. FODERA:</p> <p>17 Q. Have I questioned -- have you given</p> <p>18 me information with regard to each category of</p> <p>19 knowledge that you have with regard to the</p> <p>20 gift card program?</p> <p>21 MR. HARVEY: Same objection.</p> <p>22 THE WITNESS: It's a pretty</p> <p>23 broad statement.</p> <p>24 BY MR. FODERA:</p>

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<p>1 Q. It is. It's meant to be broad.</p> <p>2 A. I can't be a hundred percent.</p> <p>3 Q. Go ahead.</p> <p>4 A. Whatever knowledge I've shared or</p> <p>5 based on what you asked me? Every category of</p> <p>6 gift card? That's a pretty broad statement. I</p> <p>7 don't know where else -- I don't even know where</p> <p>8 to go with the answer.</p> <p>9 Q. Of the gift card program. And let</p> <p>10 me -- let me put some meat on those bones.</p> <p>11 All right? At some point in time in the future</p> <p>12 there's going to be a trial in this matter, and</p> <p>13 this is my one opportunity to ask you questions</p> <p>14 outside of the trial. What I want to avoid is we</p> <p>15 walk into a trial and you get up on the stand and</p> <p>16 you say, "Oh, you know what, I was completely in</p> <p>17 charge of the ABC part of the gift card program</p> <p>18 and here's what that was about," and it's</p> <p>19 something that I haven't asked you about today. I</p> <p>20 want to make sure that I've covered all aspects in</p> <p>21 the categories of the gift card program as far as</p> <p>22 your knowledge is concerned. That's all.</p> <p>23 MR. HARVEY: I object. I think</p> <p>24 you're asking that question too broadly and</p>	<p>1 Q. That impact each aspect of your</p> <p>2 responsibilities of the gift card program. Is</p> <p>3 that fair? Is that fair?</p> <p>4 A. To the best of my knowledge, yes.</p> <p>5 Q. Okay. I asked you if you spoke with</p> <p>6 anybody at TD Bank with regard to preparation, and</p> <p>7 I asked you if you met with your lawyer but I</p> <p>8 didn't ask what the substance of that was. Aside</p> <p>9 from TD Bank and your lawyer, did you speak with</p> <p>10 anybody else in preparation for this deposition?</p> <p>11 A. No.</p> <p>12 Q. You told me about you gave Mr. Harvey</p> <p>13 an approximation of about twenty-five or so emails</p> <p>14 relating to a search that you had performed on</p> <p>15 your computer for gift card-related emails. Do</p> <p>16 you recall that testimony?</p> <p>17 A. Yes.</p> <p>18 Q. Other than that specific search, were</p> <p>19 you involved in the electronic discovery or in</p> <p>20 putting together any of the emails or other</p> <p>21 electronic pieces of information for the -- for</p> <p>22 Mr. Harvey in this case?</p> <p>23 A. Specifically electronic?</p> <p>24 Q. Well, I'm going to ask electronic and</p>
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<p>1 it's unfair. And I do think you can ask</p> <p>2 that question in a much more specific and</p> <p>3 narrow way to get the same information.</p> <p>4 But the way you're asking it in my view is</p> <p>5 not good.</p> <p>6 But you can answer the question</p> <p>7 to the extent you can.</p> <p>8 THE WITNESS: I don't know if I</p> <p>9 can answer the question.</p> <p>10 BY MR. FODERA:</p> <p>11 Q. Well, you've had, since 2003, you had</p> <p>12 a variety of positions with TD Bank. Going back</p> <p>13 before that, but the gift card program, the pilot</p> <p>14 program starts in 2003.</p> <p>15 A. Correct.</p> <p>16 Q. Going forward from that. And I want</p> <p>17 to just make sure that I have captured in my</p> <p>18 questioning to you all of the aspects of the</p> <p>19 program that you were involved with, that's really</p> <p>20 where I'm going with this, so that I can avoid</p> <p>21 being surprised at some point in the future.</p> <p>22 A. We've discussed the roles I've had at</p> <p>23 the bank that impact the gift card. Does that</p> <p>24 answer your question?</p>	<p>1 then I'm going to open it. So --</p> <p>2 A. Not electronic that I can recall.</p> <p>3 Q. What about other any materials?</p> <p>4 A. Yes.</p> <p>5 Q. And what did you do in preparation of</p> <p>6 putting together those materials?</p> <p>7 A. I was asked if there was other</p> <p>8 materials that wouldn't be in electronic that I</p> <p>9 had access to or that I knew were in the area, in</p> <p>10 where my area of the bank is, and there was a --</p> <p>11 what do you call it -- a cabinet that Dan Goldman</p> <p>12 had left behind that had documentation about the</p> <p>13 gift card program. So I took that and sent it to</p> <p>14 Mr. Harvey.</p> <p>15 Q. Okay. And did you direct any of your</p> <p>16 employees to do any searches, any --</p> <p>17 A. No.</p> <p>18 Q. -- additional searches?</p> <p>19 We talked about the electronic</p> <p>20 part, but any other hard copy, I guess, searches?</p> <p>21 A. Just the individual that I said,</p> <p>22 "Where's Dan's cabinet," and they had the key --</p> <p>23 Q. Okay.</p> <p>24 A. -- and I took it out.</p>

43 (Pages 166 to 169)

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<p>1 Q. Other than that?</p> <p>2 A. No.</p> <p>3 Can I clarify?</p> <p>4 Q. Sure.</p> <p>5 A. The young lady that I went to and</p> <p>6 asked could she get a copy of the video.</p> <p>7 Q. Okay. Let's spend a little bit of</p> <p>8 time, from your perspective I'd like to know how</p> <p>9 does a customer purchase a gift card and if it's</p> <p>10 changed, walk me through the process.</p> <p>11 A. So a customer comes in, tells the</p> <p>12 CSR, "I'd like to buy a gift card." The CSR sits</p> <p>13 down with the customer and identifies the</p> <p>14 customers, because we only sell to customers as a</p> <p>15 general rule. They'll look up the customer's</p> <p>16 information on the system to validate they are who</p> <p>17 are they, obtain ID, if appropriate.</p> <p>18 They would then ask the</p> <p>19 customer the denomination of the card that they</p> <p>20 would like to purchase. Then they would go get</p> <p>21 the card, cause they're locked in the vault for</p> <p>22 security reasons. Obtain, on the way back if it's</p> <p>23 not in their desk, sometimes it is in their desk,</p> <p>24 so the disclosure, the box, and the ribbon.</p>	<p>1 flap?</p> <p>2 A. Yes, that the terms and conditions</p> <p>3 included.</p> <p>4 Q. And how is that -- what is the</p> <p>5 customer service representative told with regard</p> <p>6 to what they tell --</p> <p>7 A. In addition to the greeting card,</p> <p>8 this contains your terms and conditions which</p> <p>9 should be given to the recipient to mostly</p> <p>10 register their card.</p> <p>11 Q. Well, I want to be clear here and</p> <p>12 parse it out. The terms and conditions and the --</p> <p>13 what do you call this, the gift card part?</p> <p>14 A. The greeting card.</p> <p>15 Q. -- the greeting card are all part of</p> <p>16 the same trifold.</p> <p>17 A. Correct. Purposely.</p> <p>18 Q. And it says, for you, on the front.</p> <p>19 And then you open it, and then it has the</p> <p>20 gift card portion of it. And then you open it</p> <p>21 again and then you have to reach in to the middle</p> <p>22 flap, between the middle flap and pull out the</p> <p>23 terms and conditions. We agree, do we not, that</p> <p>24 the customer service representative is not trained</p>
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<p>1 They would then load the card</p> <p>2 with the customer, and then they identify, they</p> <p>3 validate for the customer, here's the card, here's</p> <p>4 the number, here's the information on the card,</p> <p>5 and then they would ask them would they like them</p> <p>6 to fill out the greeting card for them and</p> <p>7 identify here's the greeting card which includes</p> <p>8 your disclosure. Or terms and conditions. I</p> <p>9 don't think they say disclosure; they would say</p> <p>10 terms and conditions. And then they wrap it up,</p> <p>11 putting the card inside the insert, two little</p> <p>12 cutouts, the card, the greeting card is placed on</p> <p>13 top, the box is closed, the ribbon's attached and</p> <p>14 it's handed to the customer.</p> <p>15 Q. In your experience and training is</p> <p>16 the customer service representative trained to</p> <p>17 open the trifold and reach inside underneath the</p> <p>18 middle flap of the trifold and pull out the terms</p> <p>19 and conditions and go over the terms and</p> <p>20 conditions with the --</p> <p>21 A. No.</p> <p>22 Q. Okay. Is the customer service</p> <p>23 representative trained at all to let the purchaser</p> <p>24 know that there's something underneath this middle</p>	<p>1 to go in and pull out those terms and conditions</p> <p>2 and show the customer, correct?</p> <p>3 A. Yes.</p> <p>4 Q. But the customer service</p> <p>5 representative is trained to tell the purchaser</p> <p>6 that this trifold contains the terms and</p> <p>7 conditions?</p> <p>8 A. Yes, and important information for</p> <p>9 the recipient.</p> <p>10 Q. And important information for the</p> <p>11 recipient. Okay.</p> <p>12 And how is it that the</p> <p>13 recipient knows that the terms and conditions are</p> <p>14 not just what's contained on the two ends of this</p> <p>15 trifold?</p> <p>16 A. The cutout inside the -- the cutout</p> <p>17 in there implies that there's something inside</p> <p>18 there for the customer. The little cutout --</p> <p>19 Q. Okay.</p> <p>20 A. -- would show that there's something</p> <p>21 there.</p> <p>22 MR. HARVEY: I'm going to</p> <p>23 object. You have it poked all the way</p> <p>24 inside so you can't see it, but the terms</p>

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<p style="text-align: center;">Page 170</p> <p>1 and conditions sit -- it says --</p> <p>2 THE WITNESS: It usually sticks</p> <p>3 out a little further than that. That's why</p> <p>4 the hole's there.</p> <p>5 BY MR. FODERA:</p> <p>6 Q. Go ahead.</p> <p>7 A. Typically like that, and it says,</p> <p>8 terms.</p> <p>9 Q. Okay. And is the -- is the customer</p> <p>10 service representative trained --</p> <p>11 MR. FODERA: Well, maybe we</p> <p>12 should make a copy of this and attach it as</p> <p>13 an exhibit. Do we need to? I don't think</p> <p>14 that we need to. We know what we're</p> <p>15 talking about with the trifold here.</p> <p>16 MR. HARVEY: That's the</p> <p>17 document that I presented to you as an</p> <p>18 exemplar at the last -- at the deposition</p> <p>19 of the plaintiff Fern Rutberg of the</p> <p>20 trifold with the terms and conditions in</p> <p>21 it.</p> <p>22 MR. FODERA: Well, it's not</p> <p>23 actually that one, but close enough.</p> <p>24 BY MR. FODERA:</p>	<p style="text-align: center;">Page 172</p> <p>1 and conditions attached to that card?</p> <p>2 MR. HARVEY: Can I hear that</p> <p>3 question back?</p> <p>4 BY MR. FODERA:</p> <p>5 Q. Is it important that the purchasers</p> <p>6 and the recipients are fully informed of the terms</p> <p>7 and conditions attached to the card?</p> <p>8 MR. HARVEY: Object to the form</p> <p>9 of the question.</p> <p>10 THE WITNESS: That's why we</p> <p>11 have terms and conditions.</p> <p>12 BY MR. FODERA:</p> <p>13 Q. That's not responsive to my question.</p> <p>14 A. But that's the answer. I mean we --</p> <p>15 Q. Is it important?</p> <p>16 A. Yes, they have terms and conditions</p> <p>17 and that they receive the terms and conditions,</p> <p>18 absolutely, and that's why we have it included in</p> <p>19 the trifold.</p> <p>20 Q. Listen closely to my question. Is it</p> <p>21 important that purchasers and recipients are fully</p> <p>22 informed of the terms and conditions attached to a</p> <p>23 card?</p> <p>24 MR. HARVEY: Objection. Asked</p>
<p style="text-align: center;">Page 171</p> <p>1 Q. Is the customer service</p> <p>2 representative trained to, when they're opening up</p> <p>3 this trifold or looking at the trifold and handing</p> <p>4 it to the person, are they trained to make sure</p> <p>5 that terms and conditions, which just fell back in</p> <p>6 and can't be seen, is visible?</p> <p>7 A. I can't say for sure.</p> <p>8 Q. Did you see how that just fell away?</p> <p>9 A. Yeah, I did.</p> <p>10 Q. Describe it to me.</p> <p>11 A. Describe?</p> <p>12 Q. What just happened with this, with</p> <p>13 the terms and conditions?</p> <p>14 A. The terms went further into the</p> <p>15 jacket.</p> <p>16 Q. And would a consumer know to look in</p> <p>17 that jacket if that's not sticking out?</p> <p>18 A. I would look as a consumer.</p> <p>19 Q. Would you expect every consumer to</p> <p>20 look?</p> <p>21 A. I can't speak for every consumer. I</p> <p>22 would -- as a consumer I would look in there.</p> <p>23 Q. Is it important that the purchasers</p> <p>24 and the recipients are fully informed of the terms</p>	<p style="text-align: center;">Page 173</p> <p>1 and answered.</p> <p>2 MR. FODERA: I disagree. It</p> <p>3 wasn't answered.</p> <p>4 MR. HARVEY: I think he</p> <p>5 definitely just answered that question.</p> <p>6 MR. FODERA: No. It wasn't</p> <p>7 responsive. He answered the question. It</p> <p>8 wasn't a responsive answer.</p> <p>9 MR. HARVEY: Counsel, I think</p> <p>10 he said -- maybe the court reporter could</p> <p>11 read back the answer.</p> <p>12 (The court reporter read back a</p> <p>13 preceding portion of the testimony as</p> <p>14 directed:</p> <p>15 "A. Yes, they have terms and</p> <p>16 conditions and that they receive the terms</p> <p>17 and conditions, absolutely, and that's why</p> <p>18 we have it included in the trifold.")</p> <p>19 (Discussion held off the</p> <p>20 record.)</p> <p>21 BY MR. FODERA:</p> <p>22 Q. Is it important that purchasers and</p> <p>23 recipients are fully informed of the terms and</p> <p>24 conditions?</p>

45 (Pages 174 to 177)

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<p>1 A. It's important for the purchaser and 2 the -- I'm sorry, purchaser and the recipient to 3 receive the terms and conditions, yes. 4 Q. Is it important for them to be fully 5 informed of the terms and the conditions? 6 A. That's the purpose of the terms and 7 conditions, so they're fully informed about the 8 gift card program and how it works. 9 Q. Why is that important? 10 A. Because it gives you all the 11 disclosures of how the card operates, how to 12 register your card, how to manage your card. 13 Q. Do you think that information about 14 when and how to use the card should be provided on 15 the gift card, itself, or on a sticker or taped, 16 affixed to the card? 17 MR. HARVEY: Object to the form 18 of the question. 19 THE WITNESS: Can you clarify 20 when and how? What do you mean by that? 21 BY MR. FODERA: 22 Q. Well -- 23 A. You don't have to -- 24 Q. I'm sorry?</p>	<p>1 to run, correct? 2 A. Not from the card. 3 Q. Do you think that information about 4 that should be provided on the gift card, itself? 5 MR. HARVEY: Object to the form 6 of the question. 7 THE WITNESS: I would believe 8 that the card with the expiration date 9 would give you some inkling that you should 10 use the card. 11 BY MR. FODERA: 12 Q. But the expiration date does not bear 13 any relationship to the issue date, does it? 14 A. It could. 15 Q. Explain to me how you believe it 16 could. 17 A. Well, because if it's twelve months 18 out and it was purchased today and given out 19 tomorrow and the inventory was current, it could 20 be exactly twelve months, and thirteen months -- 21 twelve month expiration would be twelve months 22 from the issue date. 23 Q. Here's a card that I'll represent to 24 you is over a year old that was given out at</p>
Page 175	Page 177
<p>1 A. The card is used -- I mean it's 2 activated. There's really little you need to do 3 other than go out and spend it. It's an active 4 card. 5 Q. Don't you think you need to know when 6 the card is activated? 7 A. It is activated automatically. 8 Q. But the recipient doesn't know when 9 the card is activated. 10 A. Why do they need to know? It will 11 work when they go to use it. 12 Q. Because if they wait thirteen months 13 from that date, fees attach that they're not aware 14 of. 15 MR. HARVEY: Object to the form 16 of the question. 17 MR. FODERA: Let me rephrase 18 the question. 19 BY MR. FODERA: 20 Q. Because if they wait thirteen months 21 and a day, fees attach to that card. 22 A. Which are disclosed. 23 Q. But they can't tell from the day they 24 received that card when the thirteen months began</p>	<p>1 Christmas in 2008. Can you tell how it is that 2 that has an -- assuming what I say is correct, can 3 you tell me how that is that has an expiration 4 date of 10-10? 5 A. Not from this card, no. 6 Q. Can tell what the issue date of that 7 card was? 8 A. Not from the card, no. 9 Q. Do you think if there was a sticker 10 affixed to it saying what the issue date is, you'd 11 know what the issue date was? 12 A. Well, obviously if there was a 13 sticker that said the issue date on it, you would 14 know what the issue date was. 15 Q. Do you think that information should 16 be provided on the card? 17 MR. HARVEY: Object to the form 18 of the question. You can ask -- Counsel, 19 the basis for my objection you haven't 20 asked for, but you're essentially asking 21 lay opinions of this witness. He can 22 testify about what he saw, what he heard, 23 what he smelled, what he felt. He's a 24 percipient witness. He can testify about</p>

46 (Pages 178 to 181)

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<p>1 information known to TD Bank as a corporate 2 designee of TD Bank, but to get him, ask 3 him to testify about what -- you know, what 4 does he think is completely irrelevant and 5 not a proper subject for the deposition. 6 MR. FODERA: I disagree. 7 You can answer the question. 8 THE WITNESS: Repeat the 9 question. 10 MR. FODERA: Would you read 11 back the question? 12 (The court reporter read back a 13 preceding portion of the proceedings as 14 directed: 15 "Q. Do you think that 16 information should be provided on the 17 card?") 18 MR. HARVEY: Same objection. 19 THE WITNESS: I just don't see 20 the value in it. 21 BY MR. FODERA: 22 Q. You don't see the value in it? I 23 didn't hear what you said. 24 A. I don't see the value in it.</p>	<p>1 A. True. 2 Q. And then they will take that card and 3 they either have this other ancillary stuff in 4 their desk or it's somewhere else. Now, I've seen 5 this stuff prepared in two different ways. So I 6 would like to know from you if you could show me 7 how this package should actually be prepared. 8 A. Sure. 9 MR. HARVEY: Can we be clear 10 that you're handing him a box -- 11 MR. FODERA: Yeah. 12 MR. HARVEY: -- and a trifold 13 with terms and conditions in it and a card 14 and a ribbon. 15 MR. FODERA: What I'm handing 16 him is -- 17 MR. HARVEY: Just what I said. 18 MR. FODERA: -- one, two, 19 three, four, five -- one, two, three, four, 20 five, six things. First is a card. The 21 second is the base of a box. The third is 22 a cutout that fits in the box. The fourth 23 is a terms and conditions. The fifth is 24 the top of the box. And the sixth is the</p>
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<p>1 Q. Do you think that it's important not 2 to have advertisements or disclosures that are 3 misleading to a customer about terms and 4 conditions? 5 MR. HARVEY: Same objection. 6 THE WITNESS: Personally do I 7 think it's important? Sure. 8 BY MR. FODERA: 9 Q. Why? 10 A. Because you want to be honest with 11 your customers as consumers. 12 Q. When you say honest, do you agree 13 that honesty also includes full disclosure? 14 A. Yes. 15 MR. FODERA: Let's go off the 16 record for a second. 17 (Discussion held off the 18 record.) 19 BY MR. FODERA: 20 Q. Here's what I want to know, and I 21 don't know if you're familiar with it or not, what 22 you've said to me is that the marketing -- I'm 23 sorry, the customer service representative will go 24 to the vault and get the physical card.</p>	<p>1 ribbon around the box. 2 BY MR. FODERA: 3 Q. How does that get put together and 4 are they -- and are TD Bank employees trained to 5 put it together in a certain way? 6 MR. HARVEY: And before he does 7 that, let me just clarify that what you 8 called the terms and conditions is the 9 trifold insert with the terms and 10 conditions contained inside of it. 11 MR. FODERA: I agree. 12 BY MR. FODERA: 13 Q. I want you to describe it orally, if 14 you can. 15 A. So you take the box which contains 16 the cardholder -- what did you call it? 17 Q. Okay, the cardholder insert. 18 A. Insert. 19 Q. And let me ask you about that, 20 because that cardholder insert, when the box comes 21 from the manufacturer, does it come just as you 22 have it in your hand now -- 23 A. Yes. 24 Q. -- with the box closed and the</p>

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<p>1 cardholder insert in there?</p> <p>2 A. Yes.</p> <p>3 Q. Okay.</p> <p>4 A. And this is like lower, it's flat.</p> <p>5 The insert's flat.</p> <p>6 MR. HARVEY: The two notches</p> <p>7 you mean are flat?</p> <p>8 THE WITNESS: Yeah. You got to</p> <p>9 pull them.</p> <p>10 And then you place -- you</p> <p>11 obviously issued the card now to the</p> <p>12 customer and it's loaded.</p> <p>13 BY MR. FODERA:</p> <p>14 Q. All right. You've issued the card to</p> <p>15 the customer and it's loaded.</p> <p>16 A. Place the card, terms and conditions,</p> <p>17 what I call greeting card.</p> <p>18 Q. Trifold.</p> <p>19 A. Trifold goes on top. Ribbon goes</p> <p>20 here -- I mean lid goes on, and ribbon stretches</p> <p>21 around the box.</p> <p>22 Q. And that's the completed box?</p> <p>23 A. Yes.</p> <p>24 Q. And that's the way it's handed to the</p>	<p>1 some of them, I mean we've got some of the</p> <p>2 materials here if you want to refer to them. And</p> <p>3 maybe there's other materials, I don't know.</p> <p>4 A. I can't be certain that it</p> <p>5 specifically says that. I want to say I thought</p> <p>6 it was in the store huddle, like, overview guide,</p> <p>7 but I can't -- I'm not a hundred percent sure.</p> <p>8 Q. What is a store huddle overview</p> <p>9 guide?</p> <p>10 A. It's one of the training materials</p> <p>11 that would have come from -- sorry, Commerce</p> <p>12 University that's like a store huddle, tells the</p> <p>13 store manager what steps to follow, what documents</p> <p>14 are available.</p> <p>15 Q. One of these, is this what you're</p> <p>16 talking about? I'm just --</p> <p>17 A. No, that's the WAG. That's the</p> <p>18 policy manual.</p> <p>19 Q. Is this it?</p> <p>20 A. I'd have to look through.</p> <p>21 Q. I'm sorry?</p> <p>22 A. I'd have to look through.</p> <p>23 Q. We'll let you look through some of</p> <p>24 this.</p>
Page 183	Page 185
<p>1 customer --</p> <p>2 A. Yes.</p> <p>3 Q. -- the completed box?</p> <p>4 Now, can you tell me if TD Bank</p> <p>5 personnel are specifically told not to put the</p> <p>6 trifold into the empty bottom of the box and then</p> <p>7 put the cutout where the card goes on top of the</p> <p>8 trifold? Are they specifically trained not to do</p> <p>9 this?</p> <p>10 A. They're trained what to do. They're</p> <p>11 trained to put the card -- the greeting card on</p> <p>12 top of -- on top of the card.</p> <p>13 Q. Let's talk about that. The TD Bank</p> <p>14 employee is specifically trained to put the</p> <p>15 trifold on top of the gift card that's been</p> <p>16 affixed to the cutout in the box?</p> <p>17 A. Correct. Because it makes sense.</p> <p>18 From a recipient's perspective you want to see who</p> <p>19 gave you and what they're giving you.</p> <p>20 Q. When you say they're specifically</p> <p>21 trained where to put this trifold, is that in the</p> <p>22 materials? Because I can't say that I've seen it</p> <p>23 in any materials.</p> <p>24 And if you want to refer to</p>	<p>1 A. Can I clarify something I answered</p> <p>2 earlier?</p> <p>3 Q. Sure.</p> <p>4 A. Cause it specifically says here that</p> <p>5 you use -- you tell the customer about the card</p> <p>6 and you use the gift card terms and condition</p> <p>7 insert to guide her through the card.</p> <p>8 Q. Okay.</p> <p>9 A. So it obviously was written in</p> <p>10 training. I just didn't remember it.</p> <p>11 Q. Okay.</p> <p>12 A. Yeah, I don't think it's going to be</p> <p>13 in this one, but I'll look.</p> <p>14 MR. HARVEY: You might want to</p> <p>15 identify the document.</p> <p>16 MR. FODERA: It's not in TD73</p> <p>17 through 84, which is Gift Card Holiday</p> <p>18 2006.</p> <p>19 THE WITNESS: Not in this one.</p> <p>20 BY MR. FODERA:</p> <p>21 Q. All right. This is TD86 through</p> <p>22 TD98, and you said what, sir?</p> <p>23 A. It's not specific in there.</p> <p>24 Q. Okay. So it's not contained in</p>

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<p>1 there.</p> <p>2 A. That's not what I was looking for.</p> <p>3 Q. Are you referencing something from</p> <p>4 memory that --</p> <p>5 A. Yes.</p> <p>6 Q. Okay. What are you referencing from</p> <p>7 memory? Because I'm not representing that I've</p> <p>8 got every marketing material thing here.</p> <p>9 A. This wasn't marketing; it was</p> <p>10 training. Marketing, I consider marketing</p> <p>11 external to the consumer. Internal is training</p> <p>12 material.</p> <p>13 Yeah, I know I had it.</p> <p>14 Q. If you think there's a specific</p> <p>15 document, do you think that you could put your</p> <p>16 hands on that specific document back at TD Bank?</p> <p>17 A. Yeah.</p> <p>18 MR. FODERA: Well, I'm going to</p> <p>19 follow up with a request for production for</p> <p>20 that specific document.</p> <p>21 MR. HARVEY: I think we've</p> <p>22 produced that document and it would be in</p> <p>23 the documents that he reviewed, so if you</p> <p>24 want him to take a look at documents he</p>	<p>1 the customer if they want you to complete the</p> <p>2 gift card section. And then the next page,</p> <p>3 Page 11, says -- where is it -- explain the use of</p> <p>4 the card purchase, including number of balance</p> <p>5 inquiry, place the gift card and the greeting card</p> <p>6 brochure into the box and place the ribbon on the</p> <p>7 box, hand it to the customer.</p> <p>8 MR. HARVEY: Would you please</p> <p>9 identify the page number in the corner,</p> <p>10 this page.</p> <p>11 THE WITNESS: Page 11. Oh,</p> <p>12 TD001234.</p> <p>13 BY MR. FODERA:</p> <p>14 Q. Does that say where to place the</p> <p>15 trifold in the box?</p> <p>16 A. Well, the trifold's already in the</p> <p>17 box. I'm sorry. I'm sorry. The holder's already</p> <p>18 in. It says place the gift card and the greeting</p> <p>19 card brochure into the box and place the ribbon on</p> <p>20 the box.</p> <p>21 Q. Have you --</p> <p>22 A. So with that tri' -- with the holder</p> <p>23 in there, place it in, place it in, put the</p> <p>24 ribbon. It's not specifically saying that, but</p>
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<p>1 reviewed.</p> <p>2 MR. FODERA: Did he bring the</p> <p>3 documents he reviewed?</p> <p>4 MR. HARVEY: No, I have</p> <p>5 documents that -- copies of documents he</p> <p>6 reviewed.</p> <p>7 MR. FODERA: I'd like to know.</p> <p>8 I mean we don't have to spend the next</p> <p>9 two hours with you looking at documents.</p> <p>10 If you just want to give me the Bates</p> <p>11 number of document, that's fine. Either</p> <p>12 the document exists or it doesn't exist.</p> <p>13 MR. HARVEY: I'll confer with</p> <p>14 the witness after the deposition. I'll be</p> <p>15 happy to tell you that if there's such a</p> <p>16 document.</p> <p>17 BY MR. FODERA:</p> <p>18 Q. Okay?</p> <p>19 A. Uh-huh.</p> <p>20 Q. Did you want to look through that</p> <p>21 Commerce, because that's another one?</p> <p>22 A. I'll look.</p> <p>23 So this section here says that</p> <p>24 you should pull out the gift card brochure and ask</p>	<p>1 it's implying that you don't take the trifold out</p> <p>2 and put -- I mean the cardholder out. It's</p> <p>3 already predone.</p> <p>4 Q. Are you aware of instances where --</p> <p>5 well, let me ask you, if you had customer service</p> <p>6 representatives, one or more, who were in the</p> <p>7 course of their sale routinely placing the trifold</p> <p>8 under the gift box -- I'm sorry, under the insert</p> <p>9 in the gift box, is that something that would have</p> <p>10 come to your attention in the normal course of</p> <p>11 business?</p> <p>12 A. I don't know that it would come to my</p> <p>13 attention unless I saw it, but I never saw it.</p> <p>14 Q. Are you aware of it occurring for</p> <p>15 convenience sake, when the employees are putting</p> <p>16 together a gift box, or some other reason? I</p> <p>17 don't know.</p> <p>18 A. No, you can't -- you don't prepackage</p> <p>19 them because you always have to write the amount</p> <p>20 in the card. It doesn't make sense to prepackage.</p> <p>21 Plus, you got to put the card in. Cards aren't</p> <p>22 preloaded. So if you had preloaded cards, you</p> <p>23 could stuff them in a box and put a little mark on</p> <p>24 the box, 50 bucks. But they're not preloaded. So</p>

<p style="text-align: center;">Page 190</p> <p>1 it doesn't even make sense operationally to put</p> <p>2 the greeting card, terms and conditions in the box</p> <p>3 until you -- the last thing you got to write out.</p> <p>4 Q. You said earlier that the greeting --</p> <p>5 that some of them keep them in their desks --</p> <p>6 A. Yeah.</p> <p>7 Q. -- or words to that effect. But</p> <p>8 generally at TD Bank, and at Commerce before it,</p> <p>9 was there a place where the boxes were kept and a</p> <p>10 place where the trifold was kept? And we know the</p> <p>11 card, itself, was kept in a vault.</p> <p>12 A. Right. So the cards are kept in the</p> <p>13 vault, and during non-holiday season the</p> <p>14 greeting card and insert and the box and the</p> <p>15 ribbon would be kept on the shelves in the</p> <p>16 stockroom. During the holiday season, they were</p> <p>17 kept under the Christmas tree.</p> <p>18 Q. Okay.</p> <p>19 A. And -- I'm sorry. The box was kept</p> <p>20 with the ribbon on it. The greeting card insert</p> <p>21 with the trifold was kept in their drawer, the</p> <p>22 CSRs' drawer.</p> <p>23 Q. You refer to this -- we've been</p> <p>24 referring to this in our legalese as the trifold</p>	<p style="text-align: center;">Page 192</p> <p>1 in the program, you said -- or when you relaunch</p> <p>2 the program, you do it by email. Do all the</p> <p>3 customer service representatives have access to</p> <p>4 email?</p> <p>5 A. Yes.</p> <p>6 Q. And none of the tellers sell these</p> <p>7 cards?</p> <p>8 A. Not in legacy Commerce ever sold a</p> <p>9 card. Legacy Banknorth did.</p> <p>10 Q. Legacy Commerce?</p> <p>11 A. Did not sell via teller. It was</p> <p>12 always a platform experience.</p> <p>13 Q. But TD Bank sold --</p> <p>14 A. TD Banknorth did sell them at the</p> <p>15 teller. They had a different program.</p> <p>16 Q. But that hasn't happened in a couple</p> <p>17 years.</p> <p>18 A. Yeah. Yeah, I mean our systems came</p> <p>19 together last year, so it's been a year or so.</p> <p>20 Q. Is it all platform sales now? Is it</p> <p>21 all customer service representatives?</p> <p>22 A. It's available at the teller for</p> <p>23 overload.</p> <p>24 Q. What does that mean, overload?</p>
<p style="text-align: center;">Page 191</p> <p>1 and you refer to it as the --</p> <p>2 A. Greeting card.</p> <p>3 Q. -- greeting card. What is the</p> <p>4 nomenclature used at TD and Commerce?</p> <p>5 A. Greeting card.</p> <p>6 Q. Okay. We briefly spoke about</p> <p>7 in-store training, but can you tell me what kind</p> <p>8 of frequency there was of in-store training and</p> <p>9 what kind of frequency there is of in-store</p> <p>10 training with regard to the gift card programs?</p> <p>11 A. Yeah, so each holiday season we would</p> <p>12 relaunch the gift card training either through</p> <p>13 email, you know, Coming again, here's some</p> <p>14 changes, the box's green, the box's not red. Then</p> <p>15 there were store huddles, and then there would be</p> <p>16 training materials attached to that, that would</p> <p>17 kind of go over the Q and A process. So annually</p> <p>18 there was a bigger push relative to training</p> <p>19 because we were gearing up for the holiday season.</p> <p>20 Q. What about a new employee training</p> <p>21 manual or --</p> <p>22 A. Yeah, I'm not sure if it's covered in</p> <p>23 CSR training. I'd have to go back and look.</p> <p>24 Q. What about with regard to the changes</p>	<p style="text-align: center;">Page 193</p> <p>1 A. In the legacy Commerce world --</p> <p>2 Q. I'm having trouble with the</p> <p>3 nomenclature. Legacy Commerce are banks that --</p> <p>4 branches that were originally Commerce Bank?</p> <p>5 A. Yes, legacy Commerce.</p> <p>6 Q. All right.</p> <p>7 A. Those store branches, they're sold at</p> <p>8 the platform as a normal course of business. If</p> <p>9 December 24 you're overloaded with customers</p> <p>10 trying to buy cards, the tellers can also have</p> <p>11 access to sell them on their system. It's not the</p> <p>12 norm; it's the exception, just for high traffic.</p> <p>13 Q. Okay.</p> <p>14 A. Banknorth has it at both teller and</p> <p>15 CSR platform because most of their stores aren't</p> <p>16 staffed with many people, so they are</p> <p>17 cross-trained on both sides. So depending on</p> <p>18 where they're working at the moment, a customer</p> <p>19 may come in for a gift card, they can do it right</p> <p>20 there at the terminal, if they want, the teller</p> <p>21 terminal.</p> <p>22 Q. Okay. So even today it depends upon</p> <p>23 where the bank came from who could sell it,</p> <p>24 generally?</p>